



LE
PRIMER RE-
PORT DES CASES
ET MATTERS EN LEY

resolues & adiudges en les Courts
del ROY en IRELAND;

Collect & digest per S^r.

IOHN DAVYS Chiualer, Atturney
Generall del Roy en cest
Realme.

Liber librum aperit.



LONDON,
Printed for the Company of
Stationers. 1628:

that Davys was one of the members of a revived society of antiquaries in 1614. S. Hen.
Alman's preface to his law terms.

F 6650.4.0

HARVARD COLLEGE LIBRARY
GIFT OF
DANIEL B. FEARING
30 JUNE 1915

PRIMER

PORT DES CASES

RT. MATTERS IN KEY

et alia de rebus et personis

et alia de rebus et personis

Collect & digest per S.

John Davis Chancery Attorney

General del Rey en cda

El Rey de Navarra

1598

London

Printed for the Company of

Stationers. 1628.



TO THE RIGHT
HONOURABLE
MY SINGULAR GOOD
LORD, THOMAS LORD
ELLESMERE, LORD CHAN-
CELLOR OF ENGLAND.

KING *Henry* the second (my most honorable good Lord) was the first King of England after the *Norman Conquest*, that was stiled Lord of Ireland. Yet are there no Records of that Kings time remaining, wherby it may appeare, that he established any forme of ciuile gouernment in this land. But it is manifest by many recordes, and stories, that his sonne King *Iohn* made the first diuision of Counties in Ireland, published the lawes of England, and commanded the due execution thereof in all those Counties which he had made, erected the Courts of Iustice, made the Standard of Irish moneys equall with the English: Briefely, he did order and settle the gouernment here in all points, according to the Modell of the Common-wealth of England. And to that end, when himselfe in person came ouer into Ireland the second time (which was in the twelfth yeare of his raigne) hee brought with him many learned persons in the lawe, and other Officers and Ministers of all sorts, to put the English lawes

A Preface Dedicatory.

lawes in execution: whereof there is a notable record in the Tower of London, 11. *Henr. 3. Patent. Membr. 3.* agreeing with that which is related by *Math. Paris. histor. magn. fol. 220. b.*

After which time the records of all legall A&ts and proceedings, namely the *Piperolls*, containing the charge of the reueue both *Certaine* and *Casual*, the *Pleerolls*, containing as well *Common Pleas*, as *Pleas of the Crowne*, *Parliament Rolls*, *Charters*, *Patents*, *Commissions*, & *Inquisitions*, were made vp in good form in euerie Kings time, the latter end of the raigne of King *Henry* the sixt, when by reason of the discession of the two Royall houses, the state of England neglecting the gouernment of this Realme, the Clarks and Officers grewe also negligent in the execution of their seuerall places. And though many of those auncient recordes haue beene embezeled, and many haue perished by carelesse keeping, yet diuers of all sorts doe yet remaine, as faire and authentique, as any I haue seene in England. Howbeit during all the time that the lawes of England haue had their course in Ireland, which is now full foure hundred yeares, there hath not beene any Report made and published of any Case in lawe, argued, or adiudged in this Kingdome: but all the arguments and reasons of the iudgements and resolutions giuen in the Courts of Ireland, haue hitherto beene vtterly lost, and buried in oblivion.

Which seemeth to me the more strange, because there haue beene within this Realme, in euery age since the raigne of King *Iohn*, men sufficiently learned in the lawes, who haue deriued their learning out of the fountaines of lawe in England, the *Innes of Court* there (being the most flourishing and honourable Academy of Gentlemen, that euer was established in any nation, for the study and learning of the Municipall lawes thereof.) And therefore they might haue beene induced to imitate the learned men of England, who from the *Norman Conquest* downewards, did continually preferue the memory of such notable cases as did from time to time arise, and were argued and ruled in the Courts of Iustice in England, by reducing the same into bookes of *Reports*, which may be called, and not improperly, the *Annalles* of the lawe.

For

A Preface Dedicatory.

For albeit our *Reports* at large which are published in Print, do begin with the raigne of king *Edw. 3.* And the broken Cases of elder times, which are scattered in the *Abridgements*, are not found higher then the time of king *Henry 3.* yet assuredly there were other *Reports* digested in *yeares* and *Termes*, as ancient as the time of king *William the Conquerour*: as appeareth by that which *Chancer* writeth of the *Serjeant at law*:

*In Termes had be Cases and Doomes all,
That fro that time of King William were fall.*

Neither doth *Glanuill* or *Bracton* disaffirme this antiquity of the *Reports* of the lawe, in that they affirme that the law of England was *ius non scriptum* in their times, as your Lordship hath noted in that most learned, graue, and prudent speech of yours, touching the *Postnati* of Scotland. For indeed those *Reports* are but Comments or interpretations vpon the Text of the *Common Law*: which Text was neuer originally written, but hath euer been preferued in the memory of men, though no mans memory can reach to the originall thereof.

For the *Common lawe* of England is nothing else but the *Common custome* of the Realme: and a *custome* which hath obtained the force of a lawe, is alwayes said to be *ius non scriptum*, for it cannot be made or created, either by Charter, or by Parliament, which are Acts reduced to writing, and are alwaies matter of *Record*, but being onely matter of *fact*, and consisting in vse and practise, it can be recorded and registred no where, but in the memory of the people.

For a *Custome* taketh beginning, and groweth to perfection in this manner: When a reasonable act once done, is found to be good and beneficiall to the people, and agreeable to their nature and disposition, then do they vse it, and practise it, againe, and againe, and so by often iteration and multiplication of the act, it becommeth a *Custome*, and being continued without interruption time out of mind, it obtaineth the force of a law.

And this *Customary lawe* is the most perfect, and most excellent, and without comparison the best, to make and preserve a Common-wealth, for the *written lawes* which are made eyther by the edicts of Princes, or by Counsells of estate, are imposed vpon the Subiect before any Triall or Probation made, whether the same be fit and agreeable to the nature and disposition of the people, or whether they wil breed any inconuenience or
no.

A Preface Dedicatory.

no. But a *Custom* doth neuer become a law to bind the people, vntill it hath it bin tried and approoued time out of mind, during all which time there did thereby arise no *inconuenience*, for if had beene found *inconuenient* at any time, it had bin vsed no longer, but had beene interrupted, and consequently it had lost the vertue and force of a lawe.

Therefore as the *lawe of nature*, which the Schoolmen call *Ius commune*, and which is also *Ius non scriptum*, being written onely in the heart of man, is better then all the written lawes in the world to make men honest and happy in this life, if they would obserue the rules thereof: So the *customary law* of England, which we doe likewise call *Ius commune*, as comming neereft to the lawe of *Nature*, which is the root and touchstone of all good lawes, and which is also *Ius non scriptum*, and written onely in the memory of man (for euery *custom* though it rooke beginning beyond the memory of any liuing man, yet it is continued and preserved in the memory of men liuing) doth far excell our *written lawes*, namely our Statutes or Acts of Parliament: which is manifest in this, that when our Parliaments haue altered or changed any fundamentall points of the Common lawe, those alterations haue beene found by experience to be so *inconuenient* for the Common weale, as that the Common lawe hath in effect beene restored againe, in the same points, by other Actes of Parliament, in succeeding ages.

And as our *Customary vnrwritten lawe* doth excell our Parliament lawes, which are *written*, so for the gouernment of the Common-weale of England (which is as well instituted and established as any Common-weale in Christendome.) Our native *Common lawe* is farre more apt and agreeable, than the *Ciuill* or *Cannon lawe*, or any other written lawe in the world: besides: howsoeuer some of our Countermen, who are *Ciues in aliena Republica, & hospites in sua*, may perhaps affirme the contrary. But certaine it is, That the great and wise-men of England in the Parliament of *Merton* did not preferre a *Forreine law* before their owne, when motion being made by the Clergie, that children borne before Marriage might be adiudged legitimate, They all made answer with one voice, *Nolumus Leges Anglia mutari*, And againe in 11.R. 2. when a new course of proceeding in Criminall Causes, according to the forme

A Preface Dedicatorie

forme of the *Ciuile* law was propounded in that virruly Parliam-
ment, Answer was made by all the Estates, That the Realm of
England neither had bin in former times, nor hereafter should
be ruled and gouerned by the *Ciuile* law, *Rot. Parliam. 11. R. 2.*
in *Archib. Turin.*

And here I may obserue for the Honour of our Nation, and
of our Auncestours who haue founded this Common-weale
wherein we liue, and enioy so many felicities, That England
hauing had a good and happy *Genius* from the beginning, hath
beene inhabited alwaies with a vertuous and wise people, who
euerm embraced honest and good *Customs*, full of reason and
conueniencie, which being confirmed by common vse & pra-
ctise, and continued time out of mind, became the *Common law*
of the Land. And though this law bee the peculiar inuention of
this Nation, and deliuered ouer from age to age by *Tradition*,
(for the common law of England is a *Tradition*, & learned by
Tradition as well as by Bookes) yet may we truly say, That no
human Law written or vnwritten, hath more certaintie in the
Rules and *Maximes*, more coherence in the parts thereof, or more
harmonie of reason in it: nay, we may confidently auerre, That
it doth excell all other lawes in vpholding a free *Monarchie*,
which is the most excellent forme of gouernment, exalting
the prerogative Royall, and being very tender and watchfull
to preserve it, and yet maintaining withall, the ingenious liberty
of the subiect.

Briefely, it is so framed and fitted to the nature and dispo-
sition of this people, as we may properly say it is *connatural* to
the Nation, so as it cannot possibly be ruled by any other law.
This Law therefore doth demonstrate the strength of wit and
reason, and selfe sufficiency, which hath beene alwayes in the
People of this Land, which haue made their owne Lawes out
of their wisdom and experience (like a silke-worme that for-
meth all her web out of her selfe only) not begging or borrowing
a forme of a common-weale, either from *Rome* or from *Greece*,
as all other nations of *Europe* haue done, but hauing sufficient
provision of law & justice within the land, haue no need *Instituti-
on & iudicium ab alio* (genius emendat), as King *John* wrote most
nobly to Pope *Innocens* the third, *Math. Paris. Histor. magn.*
p. 15. *En populus sapiens & intelligens, gens magna*: as it is said of
Gods chosen people, *4. Den.* Neither could any one man euer

*An inscription found
at Luchin d'auy
is as follows*
GENIO &
TERRAE
BRITA
NNICAE.
Joseph (London Strling)
this vol. p. 358

A Preface Dedicatorie.

vaunt, that like *Minos*, *Solon*, or *Lycurgus*, he was the first *Law-giver* to our Nation: for neither did the King make his owne *Prerogative*, nor the Iudges make the *Rules* or *Maximes* of the law, nor the common subiect prescribe and limit the *liberties* which he inioyeth by the Law. But as it is said of euerie Art or Science which is brought to perfection, *Per varios usus arte experientia fecit*, so may it properly be said of our Law, *Per varios usus Legem experientia fecit*: Long experiendo, and many trials of what was best for the common good, did make the *Common Law*.

But vpon what reason then doth *Polidor Virgil* and other Writers affirme, that *King William the Conqueror* was our *Law-giver*, & caused all our laws to be written in French? Assuredly the *Norman Conqueror* found the antient laws of England so honorable and profitable both for the Prince & people, as that he thought it not fit to make any alteration in the fundamental points or substance thereof; the change that was made was but *in formulis iuris*: he altered some legall formes of proceeding, and to honor his owne language, and for a marke of conquest withall, he caused the pleading of diuers Actions to bee made and entred in *French*, and set forth his publike Ordinances and Acts of Councell in the same tongue: which forme of pleading in *French* continued til 36. Ed. 3. when (in regard that the *French* tongue began to grow out of vse, which for many yeares after the *Norman Conquest* was as common as the *English* among the Gentrie of England) it was ordained by Parliament, That all pleas should be pleaded, debated, & iudged in the *English* tongue, and entred and enrolled in *Latine*. And as for our Statutes or Acts of Parliament, the bills were for the most part exhibited in *French*, and passed and enrolled in the same language even till the time of King H. 7. And so are they printed in *Rassels* first *Abridgement* of Statutes, published in the yere 1559. But after the beginning of King Henry 7. his reign, we find all our Acts of Parliament recorded in *English*. Onely our *Reports* of the cases, resolutions, & judgments in the Law, whereof our books of the Law do consist, haue euer vntill this day bin penned & published in that *mixt* kind of speech which we call the *law French*, differing indeed not a little frō the *French* tongue, as it is now refined and spoken in *France*, as well by reason of the wordes of *Art* and *Forme*, called the *Terminis*

*Et varias Vnde in dictione
saturat et artes Virgil*

Georg.

A Preface Dedicatorie.

of the Law, as for that we do stil retain many other old words and Phrases of speech which were vsed 400 yeares since, and are now become obsolete and out of vse among them, but are growne by long and continual vse, so apt, so natural, and so proper for the matter and subiect of these, *Reports* as no other language is significant enough to expresse the same, but onely this *Law French* wherein they are written.

And this is the true and only cause why our *Reports* & other books of the law for the most part are not set forth in *English*, *Latine*, or the *moderne French*, for that the proper and peculiar phrase of the Common law cannot be so well exprest, nor any case in law be so succinctly, sensibly, & withall so fully reported, as in this speech, which is indeede mixt and compounded of all these 3 languages. Which reason hath not bin wel vnderstood by those, who obiect it as a fault to the Professors of our law, that, forsooth, they write their *Reports* & books of the law in a strange & vnknown tongue which none can vnderstand but themselues, to the end that the people being kept in ignorance of the law, may the more admire their skill & knowledge, and esteeme and value it at a higer price. As *Cicero* in his first book de *Oratore* doth testify, that the like conceit was held of the first Professors of the *Ciuile law*, *Quia veteres illi qui huius scientia praeuerunt, obtinenda atque augenda potentia sua causa, per vulgari artem suam noluerunt.* And *Cesar* speaking of the *Druides*, who were Iudges and Interpreters of the Law among the antient *Brittaines*, doth report of them, that though they spent twenty yeares in the studie of those Lawes, *Non existimabant fas esse illi literis mandare.*

But the weakenes of this obiection against the authors of our law books will easily appeare, if we consider how easie the *law French* is to be learned: insomuch that the meanest wit that euer came to the study of the Law, doth come to vnderstand it almost perfectly within ten dayes without a Reader. So as we do not scale or locke vp the mysteries of our law in *Hieroglyphickes*, or in a darke Language that cannot be vnderstood: But wee expresse the Cases, Arguments, and Iudgements of the Law in a forme of speech, so plaine, so significant, and in a Tongue so soone learned by any man, that can speake *English*, and vnderstand *Latine*, as I dare say, there is no *rationall* science in the world, hauing so many words and *Termes of art*

Blacket. Comen

*i.e. a lecturer or
reader teacher*

A Preface Dedicatorie.

and forme, that is so cleerely deliuered in any language. And I may truly say withall, that if the bookes of our Law were all translated into *English*, they would not bee better; nay, they would not be so wel vnderstood by the Students thereof, as in this proper and peculiar Language wherein they are now written.

And as this *obiection* touching the *Speech* or *Language* wherein our *Reports* are penned doth arise out of ignorance of the cause thereof, as it is before declared; so are there other vulgar imputations cast vpon the *Law* and *Lawyers*, which may be as easily cleered, as hauing indeede no other ground but the meere misunderstanding of such as are strangers to the Profession: namely first, That there is much *uncertaintie* in the reasons and Iudgements of the Law. 2. That there are extreame and vnnecessarie *delays* in the proceedings of the Law. 3. That many *bad & dishonest causes* are wittingly defended by the professors of the law. But, *Sapientia iustificatur à filiis suis.*

1 Therefore first touching the *incertaintie of the law*; Certaine it is, that *Law* is nothing but a rule of reason, and human reason is *Lesbia regula*, pliable euery way, or like a cup with two eares, as the French prouerb is, which may be taken vp on either side, as well with the left hand as with the right; so that not onely the knowledge of the law, but all other *rationall Sciences* that are subiect to *Argument* and *Discourse*, must needs be subiect to *uncertaintie* & to *error*: & therefore vpon Iudgments giuen in our Ordinarie Courts of Iustice, the law doth admit and allow *writs of Error* to be brought, without any touch or dishonour to the Iudges, though their Iudgments be reuerfed for *error* in point of law.

Howbeit there is no *Art* or *Science* that standeth vpon discourse of reason, that hath her *Rules* and *Maximes* so certaine and infallible, and so little subiect to diuers interpretation, as the Common law of England, as it is obserued by the Lord chiefe Iustice Coke, in his Preface to the second part of his *Reports*, That in all his time there haue not beene mooued in the courts of Iustice in England, two questions touching the right of *discent* or *eschear*, or the like fundamentall points of the common law: So certaine, sure, and without questions are the *principles* and *grounds* thereof.

But whence then do so many debates & controuerfies arise & where-

A Preface Dedicatorie.

whereupon do we plead and contend so much in the courts of Iustice, if there bee so few doubts and *uncertainties* in Law? doubtlesse this question is soone resolved by one plaine and common distinction. In all the causes that are controuerted there is either *Quaestio Iuris*, or *quaestio facti*. But for one cause wherein a *question of Law* doth arise, that is indeed with the debating, there are a thousand causes at least, wherein the *fact* is only in question, and wherein if the truth of the *fact* were knowne, the *law* were cleere & without question. So as the pleading & contention in *Westminster Hall* and the rest of the courts of Iustice in both realmes, is for the most part touching matters of *fact*: In the *Chancerie*, whither there be trust or no trust, fraud or no fraud: In the *Star-chamber*, whither a Riot or no riot, Forgerie or no forgerie, Periuurie or no periurie: & the like matters of *fact* come only in question in all other Courts which proceed to the hearing & determining of causes by the examination of *witnesses*. And in the Courts of *law* where the triall is by Iurors, are there not a thousand *issues* ioyned vpon matters of *fact*, for one *demurrer* that is ioyned vpon a point in *law*? and when all these *issues* are tried either at the Barre or at the Assises, how many hundreds of *generall verdicts* are there giuen, which determine matters in *fact*, for one *speciall verdict* whereupon do result questions in *law*.

And againe, of all the questions in *law* which doe arise vpon *demurrers* or *speciall verdicts*, or which are mooued in *arrest of Iudgment*, how many of them are there ouer-ruled vpon the first opening or putting of the Case? and how few of them are there that are malleable, or can endure the hammer, so as they come to be solemnly argued at the Barre and at the Bench? As for the *Exchequer Chamber cases*, which are of such difficulty as that they draw an assemblie of al the Iudges of the law for the resolution thereof, they are so rare, as scarce twice in a yere are those Iudges drawne out of their proper Courts to deliuer their opinions vpon those doubtfull points. So as it is to bee ascribed to the great learning, wisdom, grauitie, and constancie of our Iudges, to and the *certaintie*, & excellent *harmony of reason* in our Law, that there are no more diuersities of opinion among the Iudges, or doubtfull questions in the Law, than there are.

For if the *Rules & Maximes* of the law were a thousand times

A Preface Dedicatorie.

as many as they be indeed, yet would they carry no proportion with the infinite diuersitie of mens *Actions*, and of other *accidents*, which make the Cases that are to be decided by the Law. Besides, it must be a worke of singular iudgement, to apply the grounds and Rules of the Law which are fixt and certaine, to all human acts and accidents which are in perpetuall motion and mutation.

And therefore we may truly say for the honor of our law, notwithstanding that vulgar imputation of *incertainty*, that the Iudgement and reason of it is more *certaine* than of any other human Law in the world: As well because the grounds of our common law haue from the beginning bin laid with such deep wisdom, policie, and prouidence, as that they do prouide for, and meet with, almost all cases that can possibly fall out in our Common-wealth, as also because those grounds are so plaine & so cleere, as that the Professors of our law haue not thought it needfull to make so many *glosses* and *interpretations* therupon, as other lawes are perplexed and confounded withall: which *glosses*, as one doth well obserue, *do encrease doubt and ignorance in all Arts and Sciences*. And therefore the *Ciuitians* themselues confesse, that their law is a *sea full of waues*, the *Text* wherof being digested into so many volumes, and so many Doctours interpreting the *Text*, and twice as many more commenting vpon their interpretations, and so *glosse vpon glosse*, and *booke vpon booke*, and euery Doctors opinion being a good authoritie fit to be cited and vouched among them, must needs breed distraction of opinions, and *uncertaintie* in that law. The like may be said of the *Cannon Law*, albeit the *Text* thereof bee scarce foure hundred yeares old. But of the Professors of our law, who euer yet hath made any glosse or interpretation vpon our Master *Littleton*? though into that *little booke* of his he hath reduced the principall grounds of the common law, with exceeding great iudgment and authority, and with singular method and order? and yet if hee had been an Author in the *Ciuite* or *Canon law*, I dare say, there had bin, by this time, so many *Comments* and *glosses* made vpon him, as the bookes written vpon this booke only, would haue bin more in number than all the volumes of our law at this day.

But the learned men in our law haue euer thought, that *Littleton* being a learned and reuerend iudge, wrote with a purpose to

A Preface Dedicatorie.

to be vnderstood, and that therefore another man, especially if he were of lesse learning than he, could hardly expresse him better than hee hath expressed himselfe. And therefore his book hath euer bin read of our yongest Students, without any Commentarie or interpretation at all.

But for all this, it is objected that our latter Iudgments do many time crosse & contradict the former, directly, in one and the same point of law, which is a manifest argument of *incertainty* in the Law.

Assuredly, there are verie few precedents of such contrarie Iudgments, scarce two in one age. And yet if the reasons of the later Iudgments did appeare of Record, we should find them grounded vpon *mischiefes & inconueniences* arising since the former Iudgments, or vpon other weightie considerations respecting the good of the common-wealth in generall. Otherwise there are no Iudges in any State or Kingdome vnder the Sun, that do more reuerence the opinions and Iudgements of their predecessors, than the Iudges of England haue euer done, as your Lordship, for their honour hath obserued, in that most worthie speech of the *Postnati*, wherein, among other things, your Lordship doth note the memorable saying of *Askue*, 37. Hen. 6. fol. 21. Such a Charter hath been allowed in the time of our predecessors, who were as sage and learned as we be, and of *Markham*, 4. Ed. 4. fol. 41. It is good, saith he, for vs to doe as it hath been vsed in former time, and not to keepe one way one day for one partie, and another day the contrarie for the other partie: the former precedents are enough for vs to follow.

But on the other side, let vs heare what a learned Canonist *Lodovicus Gomez* in *regula de Triennali possessore* cap. 5. is bold to say, *Non est inconueniens* (saith he) *iudicium esse uno tempore iustum, & postea eius contrarium iniustum: & hoc malum videtur imponi mortalibus in penam, ut eorum opiniones secundum varietatem temporum senescant & intermoriantur, aliaque diuersa vel prioribus contraria renascantur & deinde pubescant. Talis enim est humani iuris disciplina, ut nulla in ea opinio eodem statu diu stare possit. Dies dici cruciat verbum, & nox nocti indicat scientiam.*

And againe, *Opiniones hominum eorum corpora sequuntur, quaeum tempore vetascent & pereunt, & sicut rerum omnium itaq; quaeque & opinionum est quada vicissitudo.* And in another place, *Stilus*
bedicernus

.At Presabo Medidatoria.

*heditur, propter modernam temporum experientiam videtur magis
inre fundata: Et ideo salubet discere quod modernum sunt sicut Calices in ca-
pit. Elephantibus, quia huiusmodi priora & posteriora: quanto maiores tunc
perficaciter. And thus much may suffice to be spoken, to re-
mooue that scandall of *uncertainty*, which Ignorance doth vn-
worthily cast vpon the Common law.*

But if the reason and judgement of our Law be so little
subiect to *uncertainty*, how cometh it to passe that the pro-
ceedings of our Law are so much subiect to *delay*? for this is
another vulgar obiection against our Law and the professours
thereof. But who are they that make this obiection? haue they
themselues been ingaged in any suits of importance? haue they
passed through the Courts of justice either in course of law, or
in course of *equity*? if they haue not, they speak but by *hearsay*,
and then their testimonie in this behalfe is of little credit. If
they haue had any long depending suits of their own, then let
them examine whether their own spleen and wilfulness, or the
corruption of some needie solicitors, (who picke their living
out of the businesse they follow, and are loath to *quench the fire
that maketh them warme*) haue not rather drawn their causes to
an extraordinary length, than the ordinary proceesse of law, or
the aduice of learned Councell. For such as are learned *Coun-
cellors*, indeed, are like good *Pilots*, who though their skill be best
tried in a long and difficult voyage, do rather desire faire wea-
ther, and a speedie arrivall with their passengers in the haven.

But the troth is, it is the *stomachs* or *malice* of such clients as
will not sticke to say, That they will spend all they are worth
to haue their will of their aduersaries, (and therefore will not
be satisfied with any judgement or decree) that doth produce
and prolong suits in law; who when their learned Councell
indeed do refuse to mouth that *peccant humor* in them, do seek
out discarded *Impostors* or *Idolls*, of whom there is an opinion
among light & ignorant people, of extraordinary cunning and
sleight in carrying of businesse with aduantage, & in curing of
foild & desperat causes. These men giue them counsell accord-
ing to their owne beem, because they sooth them in their *in-
genuous humor*: howbeit in the end, when they haue wearied and
wasted themselues, they find how weak those wiles and crafty
courses are, & learn of *Esop*, that that one only plain way which
the Cat had to escape from the Dogges, was better and safer
than

A Preface Dedicatorie.

than those hundred trickes of enation whereof the Foxe did vaunt before he was taken : and they find withal the saying of *Cicero* true, *Ignoratio iuris litigiosa est potius quam scientia.*

Besides this *malignant* and vnquiet disposition of many Clients, there is another cause why suits are not brought so soone to an end as perhaps they were in former ages : namely the multitude of causes now depending in euerie Court of Iustice, euerie of which causes must haue conuenient time allowed, as well to prepare it and make it ripe to be heard or tried, as for the triall and hearing it selfe. And the true cause of the multitude of causes doth proceed from this, that the commodities of the earth being more improoued, there is more wealth, & consequently there are more contracts reall and personall, than there were in former ages. Besides, there is more luxurie and excesse in the world, which breedeth vnthrifts, bankrupts, and bad debtors; more couetousnesse and more malice, which begetteth force and fraud, oppression & extortion, breach of the peace, and breach of trust. Out of these fountaines innumerable suits do spring, which make the courts of justice so to swell; and hence it is that our statute lawes since *Hen. 8.* his time doe make vp so great a volume, and hence it is that the professors of the law are growne withall to so great a number, for where there is *magna messis* there must be of necessitie *operarij multi.*

Indeed, if wee all liued according to the law of nature, wee should need few laws, and fewer lawyers. *Do as thou wouldst be done vnto* were a rule sufficient to rule vs all; & euery mans consciēce would supply both the place of an *aduocate* & a *judge*, and then we should suffer no costs of suit, nor delay of proces.

And againe, if we were a poore and a naked people, as many Nations in *America* be, we should easily agree to be iudged by the next man we meet, and so make a short end of euerie controuerfie. When the people of *Rome* were little better than *Sheepheards* and *Heardsmen*, all their laws were contained in ten or twelue *Iuoric tables*: But when they became Lords of all the world, what a world of bookes were there written of the *Roman Ciuill law*? The like we see in euery commonwealth, when it once begins to flourish and to grow rich, & mighty: the people grow proud withall, and their pride makes them contentious and litigious, so as there is need of many Lawes to bridle them, and many Officers to execute those lawes, and many

Felix Boni

A Preface Dedicatorie.

Lawyers to interpret those laws, and al little enough: as when a body grows full and grosse it needs more phyfick than when it was leane.

And yet though our suits and causes be very many, and our Courts of Iustice but a few, whereby it must needs come to passe, that euery particular busines moouing in his turne must haue the slower motion: yet if we compare our legal proceedings with the proces of other kingdomes & commonweales, (especially in *France*) we shall find, that according to the vsual clause in diuers writs, we haue indeed *plenā & celerem iustitiam*, (though the *briefest Iustice be not alwaies best*) and that our causes for the most part being orderly pursued, may come to their period in a yeare, with the course of the *Sun*, when there are many processses in forreine countries, that seeme to be gouerned by *Saturne*, which planet doth scarce finish his course in the space of thirtie yeares: as *Bodin* doth testifie of his own country, that there were more suits in law depending in *France*, than in all *Europe* besides, and that many of those causes were a hundred yeares old: as that of the county of *Rai* (saith he) which suit hath been so well entertained in all the *Chambers of Iustice*, as albeit the parties that began it are long since dead, yet the suit it selfe is still aliue. Besides, we haue not so many *Appeales*, nor so many *reuiues* of causes, as the *Ciuile* and *Canon lawes* do admit, neither haue we at this day so many delaies by *essoines*, *vouchers*, & *protections*, as were in vse in former ages, when titles of land were tried onely in *ACTIONS reall*, which are now growne almost out of vse, and a more speedy course of trial inuented by *mixt* and *personall ACTIONS*.

Lastly, there is no Nation in the world (I speake for the honour of our nation and of our land) that hath a course of Iustice so speedy, and withall so commodious & easie for the subiect, as our trialls by *Affise* and *Nisi prius* are. For what Kingdome is there vnder the *Sun*, wherein euery halfe yeare the publicke Iustice doth make her progresse into euery part thereof, as it doth in the Kingdomes of *England* and *Ireland*? whereby it commeth to passe, that whereas the people of other countries do trauell far to seek Iustice in their fixt and setled Courts, as it were at fountaines, or cisternes, the streames of Iustice are deuied vnto our people, & brought by cōduit pipes or quils euē home, as it were, to their own dores. And thus much I thought

fit

A Preface Dedicatōrie.

fit to obserue for the cleering of that vniust imputation of long and vnnecessary *delais* in our legall proceedings.

3 But there is yet another exception against the professors of our law, namely, that wittingly and willingly they take vpon them the *defence* of many *bad causes*, knowing the same to bee vniust when they are first consulted with and retained. And this is obiected by such as presume to censure our Profession in this manner. In euery cause betweene party and party (say they) there is a *right*, and there is a *wrong*, yet neither the one party nor the other did euer want a Councillour to maintaine his cause. This may be true for the most part, and yet in truth the learned Councill whose fortune it is to light on the *wrong side* may bee free from imputation of any blame. For when doth the right or wrong in euery cause appeare? when is that distinguished and made manifest? can it bee discovered vpon the first commencement of the suit, and before it bee knowne what can be alleaged and prooued by either partie? Assuredly it cannot: and therefore the Councillor when he is first retained cannot possibly iudge of the cause, whither it be iust or vniust, because he heares onely one part of the matter, and that also hee receiues by information from his Client, who doth euer put the case with the best aduantage for himselfe. But when the parties haue pleaded & arguē issue; when they haue examined witnesses in course of equitie, and be descended to a triall in course of law: after publication and hearing in the one cause; and full euidence deliuered in the other; then the learned Councill of either side may perhappes discern the right from the wrong, & not before. But then are the causes come to their *Catastrophe*, and the Councillors *Act* their last part. And yet vntill then the true state of the cause on both sides could not possibly be discovered.

If then the causes that are prosecuted, doe for the most part hang in a doubtful ballance, vntil the hearing or trial thereof, (for if a cause be vndoubtedly & apparently naught on the one side, no man is so vnwise as to follow it to the end, with the expence of mony and hazard of his credit) how can it be iustly said, that the Councillour against whose Client a *Decree* or *Verdict* doth passe, hath wittingly defended an *vniust cause*, whē he wist not how the ballance would incline, vntil he had made his vttermost defence? howbeit if any of our Councillors do either in the *prosecution* of their Clients causes giue sinister and

A Preface Dedicatorie.

and craftie Councell, or vpon the hearing or triall thereof, make an over bold defence of any dishonest action, our Iudges are so tender and iealous of the honor of our Profession, as they lay a note of Infamie vpon such persons, so as they seldome or neuer are permitted to rise to any higher degree in the Law, or any office of trust in the common-wealth.

Whereby it commeth to passe, that no men of any other calling or profession whatsoever, are more carefull to preserve their good name & reputation, & stand more precisely vpon their good behauior, than the learned Professors of the common law.

And as our Iudges do discountenance bad Councillors, so doth our law abhorre the defence & maintenance of bad causes, more than any other law in the world besides. For by what other law is *vnlawfull maintenance, Champertie, or buying of titles*, so seuerely punished? By what other law doth the plaintife *pro falso clamore*, or vniust vexation, or the defendant for pleading a false plea pay an amerciament or fine to the publicke Iustice? And this is one cause, among others, why our law doth not allow Council vnto such as are indicted of Treason, murder, rape, or other capitall crimes. So as neuer any Professour of the law of England hath been knowne to defend (for the matter of fact) any Traitor, Murdrer, Rauisher, or Theef, being indicted and prosecuted at the suit of the King. *Turpe reos empti miseris defendere lingua*, saith the Poet, & therefore it is an honor vnto our law, that it doth not suffer the Professors thereof to dishonor themselues (as the Aduocates & Orators in other Countries doe) by defending such offendours. For example whereof we haue extant diuers Orations of Cicero, one *pro C. Rabirio perduell. omis reo*, another *pro Roscio Amerino*, who was accused of Parricide, and another *pro Milone*, who was accused of Murder.

But good Lawiers haue not with vs that liberty which good Physitians haue: for a good Physitian may lawfully vndertake the cure of a foule and desperate disease, but a good Lawyer cannot honestly vndertake the defence of a foule and desperat cause. But if he fortune to be ingaged in a cause, which seeming honest in the beginning, doth in the proceeding appeare to be vniust, he followeth the good counsel of the schoolman Thom. Aquinas 22. Quæst. 71. art. 3. *Aduocatus si in principio credidit causam iustam esse, que postea in processu appareat esse iniusta, non debet eam prodere, vs scilicet alienam partem innet, reuelando causam*

A Preface Dedicatorie.

causa sua secretas : Potest tamen, & debet causam deferere, vel eum cuius causam agit, inducere ad cedendum, siue ad componendum, sine aduersarij damno.

And thus I conceiue, that the most common and colourable exceptions which are taken against our law and lawyers, may be answered and cleared by the plaine reasons & demonstrations before expressed : So as our profession may stand and be iustified in all points against *Ignorance, Enmie, and ill contented suitors*, who like cholericke *Cesse-players*, when they haue had a mate giuen them, could find in their hearts to cast both *Cessebord* and *Cessemen* into the fire.

These vulgar errors being thus reuersed, so as we may truly say, that there is no such *uncertaintie* in the rules of the law, no such *delay* in the proceedings, no such *preuarcation* or *corruption* in the Professors thereof, as it is by some vniustly pretended : why may we not proceed further, & affirme confidently, that the profession of the law is to be preferred before all other human professions and sciences, as being most *noble* for the matter and subiect thereof, most *necessary*, for the comon and continuall vse thereof, and most *meritorious*, for the good effects it doth produce in the common-wealth.

For what is the matter and subiect of our Profession but Iustice, the *Lady* and *Queene* of all moral vertues ? and what are our Professors of the law but her Councellors, her secretaries, her Interpretors, her seruants ? again, what is the *King* himselfe but the cleere fountain of Iustice ? and what are the professors of the law but *Conduit pipes* deriuing & conueying the streams of his Iustice vnto all the subiects of his seuerall kingdoms ? so as if Iustice be rightly resembled to the Sunn in the firmament, in that she spreadeth her light and vertue vnto all creatures : how can she but communicate part of her goodnesse and glorie vnto that science that is her *handmaid*, and waits vpon her ? And if Kings be *Gods schollers* (as *Homer* writeth) and that the rules of Iustice be their principall *lesson*, and if God do honor Kings with his owne name, *Dixi quod Dii estis*, (as a more diuine Poet than *Homer* singeth) especially for that they sit vpon Gods owne seate when they minister Iustice vnto the people, do not kings again highly honor those persons, whose subordinat ministry & seruice they vse in performing the principal part of their kingly office ? vndoubtedly, touching the aduancement

ment

A Preface Dedicatorie.

ment of such persons, *Salomon the King* speaketh, that they shal stand before *Kings*, and God will set them (saith *David*) with *Princes*, euen with the *Princes of his people*.

Neither is this Profession ennobled in regard of the *dignitie of her employment* only, but she is to be honoured so much the more for the *necessitie and continuall vse* of her seruice in the common-weale. For if we must honour the *Physition* *propter necessitatem*, as the wise man prescribeth; much more must we honor (for the same cause) the Professors and Ministers of the law. For neither doth *all men* at any time, nor any one man at *all times*, stand in neede of the *Physition*: for they that are in health (which are the greatest number of men) *non egent medico*, saith the great *Physition* of our soules, and our only *Advocate* which is in Heauen. But *all men* at *all times*, & in *all places* do stand in need of *Iustice* and of *Law*, which is the rule of *Iustice*, and of the Interpreters and Ministers of the law, which giue life and motion vnto *Iustice*.

For do not *all persons* stand in need of *Iustice*, when without her rule the Prince himselfe knowes not how to rule, nor his people how to obey? When without her support the Nobleman cannot vphold his honour, nor the common subiect hold his liberty? When without her safegard the rich man cannot bee free from spoile, nor the poore man from oppression? Briefly, when without her no man liuing, be hee vertuous or vicious, can enioy his life, nor any thing that makes his life delightful? For the couetous man cannot encrease his profit, nor the sedfual man enioy his pleasures, but vnder the shaddow of her wings.

Againe, is not *Iustice* needfull at *all times*, when we can neither trauell safely by day, nor sleepe securely by night without her protection? when if such a law were made indeed, as was propounded by a wicked Emperour, *That all lawes should cease for foure and twentie houres*, that short cessation would bee sufficient to giue opportunity to wicked men to make a greater combustion in the whole world, than that which hapned when the Chariot of the Sun did want a guide but halfe a day, as it is liuely expressed in the fable of *Phaeton*.

Lastly, is not *Iustice* necessarie in *all places*, when we cannot without perill make a voyage by sea vnlesse shee waite vs, nor a journey by land, vnlesse shee conuoy vs? when wee should
be

A Preface Dedicatorie.

be oppress'd by force in the countrey, if she did not defend vs, and vndone by fraud in the citie, if she did not relieue vs? when she encloseth euerie mans garden and field, and makes euerie mans cottage his castle of defence? So as we haue not such a vniuersall and continuall vse neither of the light of the Sun, nor of fire and water, as we haue of the light and heate and comfort of Iustice: for a man may remaine aliue some houres without the vse of those common benefits; but a *commonwealth*, wherein each priuat mans weale consisteth, cannot stand and continue one minute of an houre, if *Iustice*, which is her *soule*, be departed from her.

It therefore *Iustice*, and the *law*, which is but a *rule* or *lesson* of *Iustice*, be so necessary for all *persons*, *times*, and *places*, as no familie, no city, no common-wealth, no Kingdome, can stand without the support thereof; how needfull is the seruice of *learned men in the law*, without which Iustice it selfe cannot possibly stand? for *Iustitia periret* (saith the President *Cassianus*) *si deesset qui Iustitiam allegaret*. For if no man did study the reason of the law, if no man kept in memory the rules of the law, if no man knew the forme of pleading, or the course of proceeding in the law, what would become of the *publique Iustice* in a short time, or how should the benefit of the law be deriued & communicated vnto the people? For as in a naturall body the reasonable soule cannot vse or transmit any of her powers, but by speciall *Organs* of the same bodie, *disposed & fitted* by nature for euery function, as the *eye* to see, the *ear* to heare, to *tongue* to speake, and the like of the rest: so in the body politique of a common-wealth, the law, which is the soule thereof, produceth no effect or operation at all, but by such of her Ministers as by art and experience are enabled and qualified for her seruice. For *Lex est Iustitia inanimata*, saith the schooleman, *Lex est mutus magistratus*, saith *Cicero*: the law of it selfe is dumbe, & speaks not but by the tongue of a learned & eloquent Lawyer: she is deafe, and heareth no complaints but by the care of a graue and patient Iudge: she is blind, and seeth no enormities but by the eye of a watchfull and diligent officer.

Againe, the law is nothing else but a *Rule*, which is made to measure the actions of men. But a *Rule* is dead and measures nothing, vnlesse the hand of the *Architect* doe applie it. It is indeed an excellent *Instrument* to make harmony and concord in the

*to y^e French speech of
Ration de Iustice
i.e. reason applied to y^e
seruice of war*

X

A Preface Dedicatorie.

the Common-wealth : but the best *Lute* that euer was made could neuer make musick of it selfe alone, without the learned hand of the *Luteplaier*.

Therefore though *Iupiter* (as *Protagorus* in *Plato* telleth vs) did first inuent & giue the *law*, yet was *Mercury* sent with that heauenly gift, to deliuer it euer vnto mankind. So as it is manifest, that without the ministerie of these *Mercuries*, of these Interpreters of the *law*, namely the learned *Professors* thereof, there can be no vse or application of the *law*, and consequently the *law* or *Iustice* it selfe cannot consist without them.

But as the estimation and price of this *Profession* is exceedingly raised by the necessarie and vniuersall vse thereof, so do her great *merits* to the common-wealth deserue a farre greater exaltation of honour. For first, the Common-wealth is indebted to the *law* for all her temporall blessings & felicities whatsoever : for all our peace, plentie, ciuilitie, and morall honestie dependeth vpon the *law*. That we enioy our liues, our wiues, our children, our lands, our goods, our good names, or whatsoever is sweet and deere vnto vs, we are beholding vnto the *law* for it. *Quid sunt regna nisi latrocinia sine iustitia?* saith Saint *Augustine* : without Iustice the Land would be full of theeves, the sea full of Pirates, the Commons would rise against the Nobilitie, the Nobilitie against the Crowne ; wee should not know what were our own, what another mans, what we should haue from our Auncestors, what wee should leaue to our children : *Maiores hereditas venit unicuique nostrum a Iure & legibus, quam à parentibus*, saith *Cicero* : in a word, there would bee nothing certaine, nothing sure, no contracts, no commerce, no conuersation among men, but all Kingdomes & States would be brought to confusion, and all human societie would bee dissolued.

But on the other side, the *law* is a fortresse for the weake to retire vnto, a Sanctuarie for the oppressed to flie vnto, it restraineth the boldnesse of the insolent, it tieth with manacles the hands of the potent, and like *Orpheus* Harpe, or *Noahs* Arke, it charmeth the fiercenesse of the Lyon and the Tiger, so as the poore lambe may lie in safetie by them.

If then the *law* it selfe doth merit so highly of all Mankind in generall, for that it is the Fountaine of all these benefits, what doeth the *Professors* of the *law* deserue, which draw these
benefits

A Preface Dedicatorie.

benefits out of that fountaine, and deriue the same vnto euerie particular person? *Nam si non habes quo haurias, & puteus altus est*, as the woman of *Samarita* saith of *Iacobs* well in the Gospel, how canst thou refresh thy selfe with the water of that well? *Si veritas sit in profundo demersa*, as *Democritus* was wont to say, if human actions be so carried in clouds, as it is hard to finde what is true, and what is false, when the truth of the fact is found, it is as hard many times to distinguish what is iust, and what vniust, if in all causes that come in question, either *questio facti*, or *questio Iuris* must first bee decided, before a man can receiue the benefit of the law (for as the wise man saith, *Deus fecit hominem rectum, sed ipse miscuit se infinitis questionibus*) what a meritorious work is it to resolute these troublefom questions which arise in the ciuill life of man, either by laying open the truth of the fact, or by clearing the doubt of the point in law, that speedy and equall Iustice may be done vnto all, and euery one may haue and inioy his own in peace? how often would the truth be concealed and suppressed? how oft would fraud lie hid and vndiscouered? how many times would wrong escape & passe unpunished, but for the wisdom and diligence of the Professors of the law? Doth not this Profession euery day comfort such as are grieued, counsel such as are perplexed, relieue such as are circumuented, preuent the ruine of the improvident, saue the innocent, support the impotent, take the prey out of the mouth of the oppressor, protect the Orphan, the widow, & the stranger? Is she not *oculus caeco*, & *pes claudis*, as *Iob* speaketh? Doth she not withal many times stretch forth *brachium saeculare* in the defence of the Church & true Religion? All which are workes of mercie and of singular merit. Againe, doth she not register & keep in memory the best Antiquities of our Nation? doth she not preserve our antient Customes and forme of government, wherein the wisdom of our Ancestors doth shine far above the policie of other Kingdoms? are not the Records of her acts & proceedings so precious, as they are kept in the kings Treasury, like Iewells of the Crowne, & reputed a principall part of the Royal treasure? Lastly, is not a worthy Professor of the law a Star in the firmament of the common-wealth? Is he not *lux in tenebris* wheresoeuer he dwelleth? Is not his house as it were an Oracle, not only to a towne or city, but to a whole cuntry round about him? So

A Preface Dedicatorie.

as he may truly say of the people that seeke his Councell, as *Apollo Pithius* spoke in *Ennius*, of such as resorted vnto his Temple.

*Sanarum rerum incerti, quod ego ope mea
Ex incertis Certos, compotesque consilij
Demisso, ne res temere trahent turbidas.*

Therefore one of the *Roman Emperors* doth not without cause giue this honorable testimony of the *Professors* of the law, *Advocati, qui dirimunt ambigua facta causarum, suaq; defensionis viribus, tam publicis in rebus quam in privatis, lapsa erigunt, fatigata reficiunt, non minus humane generi provident, quam si praelijs atque vulneribus patriam parentesque saluarent: neque enim solos nostro Imperio militare credimus, qui gladijs, elypeis, & Thoracibus nituntur, sed etiam advocatos. Militant namque causarum Patroni, qui laboratum spem, vitam, & posteros defendunt: For if it be a worthy deed (as doubtlesse it is) for a man to defend his friends or countrey with his right hand and his sword only: what an excellent service is it to defend them with his speech, his reason, & wisdom, wherein the excellencie of man doth principally consist.*

Therefore both the schooleman and the politicke doe prefer *Iustice* before *Fortitude*, and the statute of 31. Hen. 8. ca. 10. which ranketh the great officers of the kingdome in their due places, doth place the Constable & Marshal beneath the Chanceller in all assemblies of councell: For *ille semel* (saith *Cicero*, speaking of the martiall man) *hic semper proderet reipublice*, meaning the learned man of the long Robe.

And in very truth, as the Commonwealth is much beholding to the *Profession of the Law*, so are the *Professors* of the law not a little beholding to the commonwealth. For if they procure and preserve her peace and her plenty, doth not shee requite them againe with riches and with honor? Doth shee not advance them to her chiefe Benches & Offices, & trust them with the *liuelihood* & *lines* of all her people? neither do our learned men of the law grow to good estates in the commonwealth, by any *illiberal meanes*, (as *ennie* sometime suggesteth) but in a most ingenious & worthy manner. For the fees or rewards which they receaue, are not of the nature of wages, or pay, or that which wee call *salerie*, or *hire*, which are indeed duties certain,

and

A Preface Dedicatorie.

and grow due by contract for labour or service, but that which is giuen to a learned Councellor is called *honorarium*; and not *merces*, being indeed a gift which giueth honour as well to the Taker as to the *Giner*: neither is it certaine or contracted for, no price or rate can be set vpon *Council*, which is vnualueable and inestimable, so as it is more or lesse, according to circumstances, namely the *ability of the Client*, the *worthinesse of the Councellor*, the *weightines of the cause*, & the *custome of the Countrey*. Briefly, it is a gift of such a nature, and giuen and taken vpon such termes, as albeit the able Client may not neglect to giue it without note of ingratitude, (for it is but a *gratuitie* or token of *thankfulnesse*) yet the worthie Councellor may not demand it without doing wrong to his reputation, according to that morall rule, *Multa honeste accipi possunt, quæ tamen honeste peti non possunt.*

Lastly, it is an infallible argument, that the estates of such as rise by the law are builded vpon the foundation of *vertue*, in that Gods blessing is so manifestly vpon them, not only in raising, but in preserving their houses and posterities: whereof there are examples not a few, and those not obscure, in euerie shire of England, and of the *English Pale* in this kingdome of Ireland.

If then our common law of England be cleere from those vulgar imputations, which ignorance doth conceiue, and enuie report therof, if the profession or science of the law be more noble, more necessarie, more meritorious, than any other temporall Art or science: & if the dignitie of the Profession do accordingly dignifie all the Professors thereof which are qualified with learning and vertue fit for so worthy a Calling, (for such as are ignorant or dishonest, as they are to receiue no grace by the Profession, so the Profession is to suffer no disgrace by them) how highly is that person honored, whose true merit hath aduanced him to the most transcendent place of honour that can possibly be attained by that Profession? This is that *great place* or *office* which your Lordship most worthily holdeth (& long may you hold the same) vnder his Maiestie; which though it be the highest pinnacle of honour that any secular person of the *long Robe* can in re or spe aspire to, vnder any Monarch, yet was it giuen vnto your LL. *nec expetenti, nec expectanti*, by the wisest and most renowned Queene that euer reigned in Europe: who

A Preface Dedicatorie.

leaving her Crown, together with the faithfull seruants thereof, vnto the wisest and iustest King vpon earth, his Maiestie in his infallible iudgement and wisdom, confirmed this honorable office vnto your Lordship, not only with a fulnesse of grace to *your selfe*, but with an augmentation of honor to your *posteritie*. For what increase of honor can the *Lord Chancellor* receiue in his owne person, being that in England which *Ioseph* was in *Egypt*, the second person of the Realme in the administration of all Ciuile affaires: being made (as it were) chiefe Steward of his masters house, the chiefe *dispencer* of his bountie and iustice, by the deliuey & custodie of the *great Seale*, which may properly be called the *Key of the kingdom*: being the sole iudge of that high Court which is *Sedes misericordie*, and therfore exalted aboue al seats of Iustice: where he hath *Potestatem absolutam*, as well as *regulatam*, in binding and loosing the proceedings of the law, and in deciding of causes by the rules of his owne conscience.

Briefly, what can there be more *done to the man whom the king will honor*? Is he not *ad latus Principis*, to attend him? Is he not *Auricularius Principis*, to aduise him? Doth not the king make him a *Conduit of his wisdom*, when he vseth his voice & tongue to declare his Royall pleasure? And doth he not make him an *Organ of his goodnesse*, when he trusteth him with his mercie and conscience, in sweetning the bitter waters of *Summu ius*, & in mitigating the rigour of the law vnto his people? In a word, doth he not represent *reuerentiam Principis*, in the power & authoritie of his office? and do not the people feare & honor the King euen in the grauitie & dignitie of his person? And are not all these honors made more honorable, and exceedingly raised in true estimation and value, when the same are enioyed in a most famous and flourishing common-wealth, & doe proceed as Sun beames from the most religious, learned, wise, the most renowned & excellent King of the world? If then the greatest honors do of right belong to the greatest vertues, (for what is *honor* but a *reflection* and *reward of vertue*?) how vertuous a person must he be, with what gifts and graces, with what abilities and ornaments, both of art and nature must he be endowed, who can worthily supplie that great and honourable Office?

Assuredly, besides the naturall faculties and powers of his mind,

A Preface Dedicatorie.

mind, which he ought to haue in great perfection, and besides the outward comelinesse and dignitie of his person, for *Gratior est pulchro veniens à corpore virtus, & Sapientia hominū lucet in vultu eius*, saith *Solomon*, he must be furnished with al learning that hath any relation to the publique good; Diuinitie, Law, Politie, Morallitie, and especial Eloquence, to impart & communicate all the rest. He must withall haue a long and vniuersal experience in all the affaires of the Commonwealth: hee must be accomplished and absolute in all points of Gravitie, Constancie, Wisedome, Temperance, Courage, Iustice, Pietie, Integrity, and all other vertues fit for Magistracie and gouernement; yet so as the same be seasoned and tempered with affabilitie, gentlenesse, humanitie, courtesie, howbeit without descending or diminishing himselfe, but still retaining his dignitie, state, and honor. Briefly, he must be a person of such vertue and worthinesse, as his life may be a *Censura*, and his example a *Mirror* for all other Magistrates. These are the excellencies and perfections wherewith that great Officer must bee qualified and adorned: And this *Idea* haue I conceived of him not out of mine owne imagination, or weake discourse of reason, but out of an humble obseruation of your Lordshippe, in whom not only those abilities & vertues before expressed, but many other graces and ornaments do shine so brightly, as the weakest iudgement may collect out of the same a most excellent pattern of a most excellent *Chancellor*.

But perhaps it would bee thought more comely for mee to pronounce this of your lordship to others collaterally, than to speake it to your Lordship of your self directly, (though what can I declare in this kind to others, but that which the world hath long since known & acknowledged?) yet is there no man liuing whom it may better become than my self, to praise and honor your L.L. euery way, whose fauor hath bin (as it were) a *good Angel* vnto me, & to whom I stand bound for so many benefits, as that which might carry a shew of *adulation* in another, must needs be thought but *shew* and *gratitude* in me.

Howbeit, besides my particular obligation, there is no Professor of the law that is not obliged to do your lordship al honor, for the honor you haue done to the Profession of the law, wherof your Lordship hath been, during al your time, a principall light and ornament.

And

A Preface Dedicatorie.

And now (my most honorable good Lord) my deuotion to the Profession of the law; & to your Lordship the most noble Patron of the professors thereof; hauing enlarged this discourse beyond the measure & limits of an Epistle (& therefore I giue it the name of a Preface) it remaineth that I present vnto your Lordship the rude collection of a few selected Cases, which since the beginning of his Maiesties Raigne haue beene argued, resolved, & adiudged, in this Realme of Ireland.

These are the first frutes of my labor in this kinde of learning, & are therefore a due & proper oblation to your Lordship, for that my studie haue yeelded the better fruit, being cherished by the Sun-beames of your Lordships fauor. This is also the first Report of Cases arising in Ireland & ruled in the Courts of Iustice there; that euer was made & published to the world, since the lawes of England were first established in this kingdome. Lastly, I haue made choise of such speciall cases, as are either proper for this kingdome onely, or else doe containe for the most part points of learning not common, or at least not largely debated, in our bookes of the law.

But for as much as *Natura incipit ab imperfectis* as the school-man saith, Therefore these weake & imperfect beginnings do leske your Lordships protection, til time shal giue them more strength & reputation. In the meane time, if your Lordships Iudgement shall allowe the publication hereof, I shall haue the lesse cause to doubt the censure of any other, specially of my Maisters of the law in England, if any of these bookes happen to come to their hands: to whome I may truly make this protestation, that these cases being resolved & adiudged in the Courts of Iustice in Ireland, are not collected & published by me, to increase the number of the bookes of law in England, or to interrupt the better studies of the students there, by reading of this collection, but principally for the vse and benefit of our practisers here in Ireland, and to moue and incite others in this Kingdome, by this example, which doth onely open and shew them the way, to performe the like seruice hereafter to posterity.

Neither haue I besought your Lordships patronage for these cases of Ireland, in respect of my selfe onely, but also in regard of that relation which your Lordship hath vnto this kingdome. For albeit your Lordship be *Lord Chancellor of England*,

baA

yet

A Preface Dedicatorie.

yet the great Seale which you keepe there, is also of force and power within this Realme. Neither can we forget without ingratitude, that your Lordship in that high place of Councell which you hold in England, is vpon al occasions watchful and carefull of the publike good & welfare of Ireland. X

Now therfore the *onely wise* God who hath giuen vnto your Lordship those blessings which *Wisdom* hath in store for them that loue her, *Longitudo dierum in dextra eius, & in sinistra eius diuitia & gloria*, preserve your Lordship for many yeares in health and honor, that you may long continue a prudent and principall Councillor vnto your Soueraigne, a louing & prouident Father vnto your Countrey, a comfort and countenance to your particular friends, and all others who partake of your honorable fauours: among which
I remaine

*Most bound, and most deuoted to doe your
Lordship all humble service,*

I O. DAVIS.

A Preface Dedicatorie.

yet the great Scale which you have there is also offered and
 how within the Realm. Neither can we forget without in-
 gratitude, that your Lordship in that high place of Council
 which you hold in England is upon all occasions watchful and
 careful of the publique good & welfare of Ireland.

Now therefore the only wise God who hath given unto your
 Lordship those blessings which we have heard in those for those
 that touch her. Long and disease is scarce since & in further this
 health & glory; because your Lordship for many years in
 health and honor, that you may long continue a prince and
 princell Counsellor unto your Sovereign, being & pro-
 vident Father unto your Country, Scotland and
 commended to your particular friends, and all
 others who partake of your honors.

His favours: among which

I commend

Lordship all parts of service,
 & still bound, and ready to do you

J. O. DAVIS.



Trin 2. Iacobi, in Leschequer.

Le case de Proxies.



Nter le Roy & Sir *Ambrose*

Forth, Doctoz del Civile Ley, et vn des Maistres del Chauncerie, le case fuyt tyel.

Leuesque de Meth, deuant le dissoluti-
on des Monasteries, auoit vn Proxie de
xx.s. iiii. d. payable annualment hors ol
commandrie de Kells in le Countie de Meth, parcel del posses-
sions del Hospitall de S. Iohn de Ierusalem in Ireland, et vn
aut Proxie d'xx.s. payable annualment hors del impropriate
Rectorie d'Treuet in mesme le Countie, parcel del possessions
del Abby de Thomascourt in le countie de Dublin.

Anno 33. H. 8. le dit Hospital de S. Iohn de Ierusalem, et l' dit
Abby de Thomascourt fueront supprimez & dissolue, & toutes les
possessions des ambideux dits maisons fues vest in le actual
et real possession del Cozone per act del Parliamt. Mes in fin
le act est vn expresse Sauing de Proxies al tous Euesques et
leur successors.

Après ceo, l' Euesque de Meth & son Clergie, (car cē Eues-
querie nad Deane & Chapter) y fait inroll dat 16. Martij, 36.

H. 8. graunt les Proxies auantdit, (enter auters) al Roy H. 8.
ses h's et successors; le dit Roy esteant al temps del grant et
puis, in actual possession del dit commandy et Rectorie, hors
de qu'il les dits Proxies fueront payable.

Puis, la Roigne Eliz. per ses Lettes Patents dat 1. No-
uembre en l'ann 33. de sa raigne demise le dit commandy et
Rectorie al Doctoz Forth, rendant rent, sans aucun reservati-
on des Proxies. Et si oze il sera charge oue les dits Proxies,

¶

¶ les

Le Case de Proxies.

Et les arrerages d'iceux encurrez depuis le commencement de son leas, fuit le question. Et fuit adiudge que il serroit charg. Et 3. points fuerot moue, & debate en l'arguunt de cest Case.

1 Si les Proxies fueront tout ousterment extinct per le suppression & dissolution des dits religieux meafons de S. Iohn de Ierusalé, et de Thomascourt, niét obstant le dit Sauing, deins l'act de Dissolution.

2 Si l'Euesque puiroit granter les Proxies al Roy.

3 Si les Proxies fueront extinct en maines del Roy per le Unitie de possession.

Pur le premier point, fuit obiet per le counsel del Sir Ambrose Forth, que les Proxies fueront extinct per le suppression et dissolution de les religieux meafons: pur ceo que le Visitation de les religieux meafons fuit la sole cause de paynt des Proxies. Et cessante causa cessat effectus. Car les religieux persons eschaunt deraigne, & disperse, ne fueront, apres ceo, subiect al Visitation, et doncs, quant la Visitation cease, le Proxie, eschaunt soleint un Exhibition done al visitor pur ses trauayling charges, cessera ausi. Car Procuratio (come les Canonists define ceo) est exhibitio sumptuum necessariorum facta praelatis, qui diocesces peragrande Ecclesias subiectas visitant.

Uncoze ils agreeont, que le Visitation ne cessa immédiatement per le surrender, ou per l'act de Parliament, que done les religieux meafons & leur possession al Corone; car p ceo, leur Corporations ne fueront dissolue, come est tenus en le case d'Deane & Chapter de Norwich en le 3. part des Reports de le Seignior Coke. 15. Aff. p. 8. 32. H. 8. Br. Corporations 78. mes quant les religieux persons fueront deraigne, & auoent relinquis leur habit, rule & order, pur queux ils fueront visitable, adonques le Corporation fuit ousterment dissolue, et sur ceo le Visitation cessa.

Et ils ressemblont le proxie due pur Visitation al Annuite pro Consilio, ou pro Seruitio impédendo; si le counsell, ou le service soit withholdy, le Annuite est determin: issint si Rent charge soit graunt pur un chemin, stopp le chemin, et le Rent charge sera ausi stopp. 9. Ed. 4. 19. 15. Edw. 4. 2. 21. Ed. 3. 7. 45. Ed. 3. 8. Dier 6. H. 8. 2. & 6. Ed. 6. 76. issint ou Corodie est graunt pur certaine service desre fait; omission del service, determin le Corodie. 20. Edw. 4. fol. vltimo.

fuit

Le Case de Proxies.

2

fuit auxy dit, que cest dutie ne fuit annual, mes contingēt, & payable tantsolement sur chescun visitation, come escuage sur chescun journey roiall, ou come Aide pur file marier, ou pur faire fits chiualer; en queux darraine cases, si auoioye soit fait pur le ayde est bone plea en barre de auoioye, a dire, que le auoiant nad tiel fitz ou file en vie, al temps del Ayde levie F. N. Br. 82. g.

Et pur le Sauing, ils dient, que ceo fuit vn Flattering Sauing, que ne poet preseruer les proxies en esse, queux la Ley ad extinguish, come est ten⁹ 14. Eliz. Dier 3 13. que les tenures del Obit ou Chauntry terres tenus del subiects, sont extinct per lact del 1. E. 6. nient obstant le Sauing, en le dit act, propter absurditatem; issint les proxies icy seront extinct propter absurditē. Car come est absurd que le Roy terra subiect al attendance en respect de teniure, issint est absurd, le roy terra subiect al visitation ou al ascun dutie en respect de ceo. De mesme le nature sont plusors Sauings mise en Walsinghams case, Plo. Com 563. queux sont la appell Flattering Sauings.

Pur le second point, fuit obiect, que le euesque ne puissoit graunter les proxies al Roy, pur 2. raisons: lun deduce del person del Roy, le auter del person del euesque. 1. pur le Roy, admit que il fuit capable de tiel spiritual office, come destre visitor des religions persons, vncore il nauera Proxies p le inconueniencie, & indecency, & auxy p le impossibilitie. Car nest conuenient, ou decent, que les pources religions persons porteront les charges de Roy, & est auxy impossible. Car per le Canon Ley, Procuratio exhibenda est secundum qualitatē personae visitantis; & le Maistrie del person del roy, & le grandeur & son trayne est tiel, que per presumption del ley, nul priuate person poet porter les necessary charges, ou frere a luy enter-tainement agreeable al quality de son person. Et pur ceo est tenus 27. Hen. 8. 10. b. que ou common sans number fuit grant al Abbe & ses successors hors del Mannor de Dale, que aprez le dissolution, le roy nauera le common sans number: car la est dit, que si le Roy aueroit, il puissoit surcharge la terre, que la ley ne boet suffer. Come si vn villaine purchase common sans number, le seignior nauera ceo, pur le reason auantdit, car donques le terretenant perdroit la profit de sa terre.

2. Pur le euesque, coment que il poet graunter les Temporal

Al 2

rall

*Si l'on n'ait pas fait de l'auant
le commun sans number, par l'
Bachman 82. 81*

Le case de Proxies.

rall Possessions ou le assent de son Chapter ou Clergie: bnt
ceux duties queux il ad per prerogative de son Episcopall
Chaire, ou come incident a son spirituall function, il ne poet
graunter: queux per la rule del Canon ley sont de 3. kinds.
1. Subsidium Cathedraicum, que est duty de prerogative a su-
periority. 2. quarta Episcopalis, que est done a luy pur repara-
tion de les Eglises. 3. Procuraciones, pur son Visitation vt su-
pra, que est perquisite ou profit de son spirituall jurisdiction.
Come creation money done al Duke, ou Earle, pur mainte-
nance de son honoz, ne poet estre graunt ouster 6. Henr. 8.
Dier 2. a.

Pur le 3. point, ils dient, que coment que Proxie soit un p-
sonal chose, payable tant solement en respect des persons
Visitable: bncore admit que ceux Proxies sont deuenus
real, & que le commaundy & rectory sont charges oue ceux
Proxies, donqs le bntie de possession extinguis euz en mains
del Roy: come seignory, rent charge, common, & similia sont
extinguis per le purchase del terretenant, sil ad equall estate
en le terre, & en la chose que charge la terre. Et a cest entent
le case de 2. H. 4. 19. a. fuit mise, ou un Proxy ad annuitie hozs
del personage per Prescription, le personage est appropriate
al Proxy, le annuitie est extinguis a tous iours.

Mes de auter part, fuit respond per le counsell del Roy, &
Resolue per le Court, que les dits Proxies ne fueront ex-
tinguis per le dissolution des dits religious measons,
mes fueront bien preserve & saues al euesque: Et que leueqz
ad euz bien grant al Roy: & que le bntie de possession en
maines del Roy fesoit forsqe un suspension, & nemy extin-
guishment des dits Proxies.

Quant al premier point, premierement fuit observee, que
les Proxies nauoent leur Originall en le primitive
Church. Car Saint Paule en visitant tous les esglises
queux il ad plaint en Asia et Europe, ne demandoit aucun
Proxies, mes laboioit oue les proper maines, pur son susste-
nance, ne serroit burthensome al Eglises. Uncoze long
temps apres, le Canon ley, que declare que Proxies sont due
al Euesques en leur Visitations, dit, que ceo est agreeable
al

Le Case de Proxies.

3

al doctrine de S. Paule, vt à quibus spiritualia recipimus, eisdem Temporalia comunicemus. Iustit' Iuris Canon' libr' 2. c. de Cēfib.

Secondment fuit note, que ceo que nous appellons proxie ou procuracy, est appell per les Canonists, procuratio, par ceo que sur chescun visitation les persons visitable procuront necessary prouisions par les visitors: queux puissions al pimes fueront fait en refectionis ou victuals, viz. in esculentis et poculentis, mes ceo fuit oue mesure & tēperance, ne ieiuniorum doctrinā rubētib' buccis pradicēt, come est dit en un bñ cōs canōs.

Mes apzès, quant le pompe et excelle des visitors requeroit tant des prouisions que fueront greuous et intollerable al esglises, et religious measons: adonques chescun esglise & meason fuit reasonablement taxe, et per ceo, chescun proxie fuit reduce al certeyn somme de money, payable annualmēt, en nature de pension, al Ordinary, que ad le power de visitation de mero lure, come est dit. 10. Eliz. Dier 273. b.

Et ceo fuit aptement resemble al Socage en nostre Ley, de que Littleton dit, que en aucient temps, deuant le limitatiō de Temps de memoire, grand part de les Tenants queux tiendzont de leur Seignours per Socage, deuont uener oue leur Sokes per certayne iours per an, per arer et semer les demesnes del Seignour; et par ceo que tiels ouerages fueront fait par le bluer et sustenance de leur Seignours, ils fueront quites enuers leur Seignours de tous autres seruces; et puis apzès tiels seruces fueront changes en Deniers, per consent des Seignours, & per desire des tenants, en un annuel rent, &c. Et sicome les tenants en Socage apzès le dit change, payeront leur rent annualment al Seignour, coment que il ad alien les demesnes, et ad null terre desre Are ou seme: ainsi les Esglise et Religious measons, apzès que le proucuratiō de victuals fuit reduce al somme certaine, payeront ceo al Ordinaire annualment, coment que il ne se soit aucun Visitation. Et ainsi le Rule de Cessant causa cessat effectus, ne tient en cez Cases. Et a cest entent Directment est le case de Sir William Capel, mis en Littrells Case, en le 4. part des Reports de le Seignour Coke; ou fuit resoluē: que ou homme tient certeyne terre per Rent par Castle Garde, coment que le Castle soit dirute ou decay, vncōis le rent remayne; Car la est dit, que quant

Le case de Proxies.

rall Possessions ou le assent de son Chapter ou Clergie: vne
 ceuz duties queuz il ad per prerogative de son Episcopall
 Chaire, ou come incident a son spirituall function, il ne poet
 graunter: queuz per la rule del Canon ley sont de 3. kinds,
 1. Subsidium Cathedraieum, que est duty de prerogative & su-
 periority. 2. quarta Episcopalis, que est done a luy pur repara-
 tion de les Eglises. 3. Procuraciones, pur son Visitation vt su-
 pra, que est perquisite ou profit de son spirituall iurisdiction.
 Come creation money done al Duke, ou Earle, pur mainte-
 nance de son honoz, ne poet estre graunt ouster 6. Henr. 8.
 Dier 2. a.

PUr le 3. point, ils dient, que coment que Proxie soit vn p-
 sonal chose, payable tant solement en respect des persons
 Visitable: vncore admit que ceuz Proxies sont deuenus
 real, & que le commaundry & rectorie sont charges ou ceuz
 Proxies, donqs le vnitie de possession extinguis ceuz en mains
 del Roy: come seigniorie, rent charge, common, & similia sont
 extinguis per le purchase del terretenant, sil ad equall estate
 en le terre, & en la chose que charge la terre. Et a cest entent
 le case de 2. H. 4. 19. a. fuit mise, ou vn Prioz ad annuitie hors
 del personage per Prescription, le personage est appropriate
 al Prioz, le annuitie est extinguis a tous iours.

MEs de auter part, fuit respond per le counsell del Roy, &
 Resolue per le Court, que les dits Proxies ne fueront ex-
 tinguis per le dissolution des dits religious measons,
 mes fueront bien preserve & saues al euesque: Et que leuesqz
 ad euz bien grant al Roy: & que le vnitie de possession en
 mains del Roy fesoit forsque vn suspension, & nemy extin-
 guishment des dits Proxies.

QUant al premier point, premierement fuit observee, que
 les Proxies nauoient leur Originall en le primitive
 Church. Car Saint Paule en visitant tous les esglises
 queuz il ad plasint en Asia et Europe, ne demandoit aucun
 Proxies, mes labouroit oue ses proper mains, pur son sus-
 tenance, ne serroit burthensome al Eglises. Vncore long
 temps apres, le Canon ley, que declare que Proxies sont due
 al Euesques en leur Visitations, dit, que ceo est agreeable
 al

al doctrine de S. Paule, vt à quibus spiritualia recipimus, eisdem Temporalia cōmunicemus. Iustit' Juris Canon' lib' 2. c. de Cēsib.

Secondement fuit note, que ceo que nous appellons proxie ou procuracy, est appellé per les Canonists, procuratio, par ceo que sur chescun visitation les persons bistable procuront necessary prouissions par les visitors: queux pussions al pimes fueront fait en refectionz ou bictuals, viz. in esculentis et poculentis, mes ceo fuit oue mesure & tēperance, ne ieiuniorum doctrinā rubētib' buccis pradicēt, come est dit en vn ds canōs.

Mes apzès, quant le pompe et excelle des visitors requirōit tant des prouissions que fueront greuous et intollerable al esglises, et religious meafons: adonques chescun esglise & meafon fuit reasonably taxé, et per ceo, chescun proxie fuit reduce al certeyn somme de money, payable annualmēt, en nature de pension, al Ordinary, que ad le power de bictation de micro lure, come est dit, 10. Eliz. Dier 273. b.

Et ceo fuit apertement ressemblé al Socage en nostre Ley, de que Littleton dit, que en aucient temps, deuant le limitation de Temps de memoire, grand part de les Tenaunts queux tiendront de leur Seignours per Socage, deuont venir oue leur Sokes per certaine iours per an, per arer et semer les demesnes del Seignour; et par ceo que tiels ouvrages fueront fait par le biuer et sustenance de leur Seignours, ils fueront quités envers leur Seignours de tous autres seruites; et puis apzès tiels seruites fueront changés en Deniers, per consent des Seignours, & per desire des tenants, en vn annuel rent, &c. Et sicome les tenants en Socage apzès le dit change, payeront leur rents annualment al Seignour, comēnt que il ad alien ses demesnes, et ad null terre de free Tre ou seime: issint les Eglise et Religious meafons, apzès que le procuracion de bictuals fuit reduce al somme certaine, payeront ceo al Ordinary annualment, comēnt que il ne feroit aucun Visitation. Et issint le Rule de Cessant causa cessat effectus, ne tient en ceuz Cases. Et a ce entent directment est le case de Sir William Capel, mis en Littrels Case, en le 4. part des Reports de le Seignour Coke, ou fuit resolué: que ou homme tient certeyne terre per Rent par Castle Garde, comēnt que le Castle soit diruë ou decay, vncōz le rent remayne; Car la est dit, que quant le

Le Case de Proxies.

le Tenant tegnoit del Seignior, de garder, ou repaire le Castle del Seignior, et puis tiel seruice (come Littleton dit en Case de Socage) fuit en antient temps, per mutual consent del Seignior & tenaunt, change en un annuel rent, coment que soit dit rent Pro Warda Castri, vncoze le Seignior ne poert auer le Castle Gard arriere, quant il boet, mes, apres le composition et change fait, le Castle Gard est tous ousterment ale; et Pro na impoert condition, come en le case de annuitie grant Pro consilio impendend, mes pleine et perpetuel recompense et satisfaction. Pur mesme le reason en nostre case, coment que les personages impropriate sont fait ore lay see, et deuenus en maines des Lays gents, queux ne sont visitable; et coment que les religious measons sont supprimee, dissolue, et dirute, come le Castle en Sir William Capels Case, vncoze les dits certaine sommes de money queux beignont en lieu de Proxies, & retainont le nomme de Proxies, & per antient composition sont fait parcel del certaine & settled reuenues del Cuelque, remaineront a tous iours, et ne seront subiect al extinguisment; nient plus que annuities, pensions, ou portions de Cithes, queux sont pay a cest iour hors del plusors Abbeys, & impropriate Rectories, & le original causes, si queux ils fueront graunt ou pay, ne seront ore examine, ou brought en question. Et a cest iour le Roy mesme pay & allow Proxies hors de tous impropriations qui il ad en son possession, & pur ceo en quelcun lease fait per le Roy del impropriate rectory, il y ad un couenant del part del lesee, que il portera & payera tous Proxies, Synodalls, pensions, &c. Et Sir Humfrey Winch adonques chiefe Baron disoit, que deuant le dissolution des Monasteries, ou rectorie fuit appropriate al Abbey, immediatement le Visitation celloit quant al Rectorie; car le Abbe ne fuit visitable come Rectour, pur son doctrine, mes come Abbe, pur son rule & order: & vncoze sans question le Ordinary ad les Proxies hors de tous personages appropriate al Abbeys, cibien deuant le dissolution, que apres.

Et pur le Sauing en le act de 33. H.8. cap.5. ceo nest idle, ou Flattering Sauing, mes real & effectuell, car est agree deuant, que ceux Proxies fueront en esse al temps del sesans del Act, & nient extinguis per le Surrender des religious measons

meafons, car leur Corporations ne fueront diffolue, tant que les religious perfons ount relinquiſh leur meafons; & ount eſtre diſperſe: Et donques tiels choſes, queux fueront en eſſe al temps del feſans del act, poent eſtre bien preſerue, & ſaue per le act, coment que choſes extinct deuaunt, ne poent eſtre reuiue per vn Sauing, ſauns expreſſe parolz de Grant & Reſtitution. Et ceſt difference appiert pleinement en le caſe de Kekewich. 27. Hen. 8. Brooke Parliaments 77. Et en Sir Iohn Molins Caſe en le 6. part. des Reports de le Seignior Coke.

Quant al ſecond point, fuit reſolue, que les Proxies en leur Originall nature eſteuant duties payable pur Viſitation, fueront grauntable al Roy, & le Roy fuit capable de tiel graunt, ſpecialment, quant les dits duties fueront conuert al ſum de money certaine, en nature de penſion ou Annuitie. Car per le auintient Ley del Realme, le Roy ad power de viſiter, reformer, & correcter tous abules & enozmities en le Eſgliſe: & per le ſtatutes fait en temps Hen. 8. le Cozone fuit forſque remitte & reſtoze a ſon auintient iurisdiction, que fuit blurpe per le Cueſque de Rome. 32. E. 3. ſitg. Ayd. del Roy 107. Reges ſacro oleo vñti ſpiritualis iurisdictionis ſunt capaces. Et Proxie eſt profit del Jurisdiction. 10 H. 7. 18. Rex eſt mixta perſona cum Sacerdote. Aury le Roy aueſ Cithes per le common ley, de queux nul lay perſon fuit capable. 22. Aſſi. pla. 75. 21. Hen. 7. 1. Le Roy meſme viſitera les frank Chappels, & Hoſpitals. 8. Aſſ. p. 29. N. Br. 42. 2. Et Caſſaneus in Catalogo Gloriz mundi part 5. conſideratione 24. Cite vn text del Canon Ley, Viz. quod omnes reges dicuntur Clerici, Et vn autre text, que dit, Quod cauſa ſpiritualis committi poteſt Principi laico.

Et ou fuit dit, que en reſpect del grandeur del Roy, & ſon trayne, competent Proxies ne poent eſtre exhibis a luy, & per conſequence, ne poent eſtre grant a luy; ceſt obiection eſt toll, en ceo que les proxies al temps de ceſt grant fueront reduce al certaine reaſonable ſummes de money: Aury le rule del Canon Ley neſt pleinement cite deuant, car le rule eſt, Procuratio exhibenda eſt ſecundum qualiratem perſonæ viſitantis, & ſubſtā-
tiam viſitatorum.

fuit aury reſolue, que le cueſque, oue laſſent de ſo Clergy,
puſt.

Le case de Proxies.

puistoit bien granter les proxies al Roy, sur ceo que la Ley ad qualifie le person del Roy de recevoir tiel grant, coment que ceo soit tiel prerogative del Cuesque que ne poet estre assigne al autre person: come le creation money del Duke ou Countee, poet estre graunt et surrender al Roy, coment que ne poet estre graunt al subiect. Auxy les proxies esteuant ore reduce al certaine summe de Argent, et issint fait part del certainne, setle, & perpetuall reuenuel del Cuesque, poent estre cybien graunt per luy, come portion de Tithe, ou Annuitie, ou aucun de ses Rents, seruices, ou autres hereditaments temporell,

3 Quant al Tierce point, fuit auxy resolué et adiudge, que le Unitie de possession des proxies oue les rectories impropriate et religious measons, hors de queux les proxies sont payable, ne Extinguish les Proxies en maires del Roy, mes Suspend le Payment de eux Tantum, pro tempore, quousque le Roy per son grant ad seuer lun del autre.

Pur trouver la Ley en cest point, le nature de ceux choses fuit consider, queux en aucun maniere poent estre subiect al Drowning, ou Extinguishment, p Unitie de possession. Et ceux sont de 3, bindes, 1. Estates en terre, 2. Actions reall & titles al terre, 3. choses issuant ou prouenant hors del terre, ou prieses ou sur terre,

1 Estates en terre, sont proprement merge ou confound, quant meinder estate concurre oue greinder estate, en mesme le person, et en mesme le droit: come, Terminus & feodum non possunt constare simul in vna eademque persona. Et le pregnant reason de ceo est mise en le case de Bracebridge Plowd. Com 3 19.b. Pur ceo que Terme est temps finie, & fee simple est temps infinite, et le finie de necessite couient estre merge et confound en le infinite. Des ceo est Confounding et nemy Extinguishment: car si particular tenant graunt ou surrender son estate al cely en reversion, le particular Estate nemy extinct, coment que soit merge et confound: car si particular tenant ad charge le Terre oue rent, ou autre encumbrance, le Estate remainera en elle a cest entent. Et reuera Estates en terre, et Droit al terre, sont choses de tiel Substance, queux ne poent estre extinct, ou interire penitus,

Le Case de Proxies.

5

interire penitus. Et pur ceo Littleton dit, que si disseisee, quant son entrey est toll, releisa al terretenant tout son droit que ceo ne emurera per voy de Extinguishment; car le droit que il auoit passa al tenant per son Release: Et serroit inconuenient, que tiel antient droit serroit extinct tout ousterment, Car droit ne poet pas morier.

Des choses queux issuent hors del terre, come Seigniorie, rent charge, &c. sont subiect al Extinguishment a tous entents. Come si seigniorie graunt son seigniorie al Terretenant & estrange, la terra nul ioyntenance, ou suruiuoze enter euy, car le moitie del Seigniorie est extinct a tous entents & purposes Plowd. Com 419.2. Et si Seigniorie Release al tennant tout son droit en le Seigniorie, ou en la terre, tiel release ba per voy Dextinguishment vers tous persons. Littleton 112.b.

2 Real Actions auxy, & Conditions, sôt subiect al Extinguishment, & ceo est quasi per unitie de possession. Come en tous cases de Remitter, la cestuy que ad droit de Action pur terre, ad le possession de mesme le terre. issint que n'est aucun person vs que il poet porter son Actio, & pur ceo le Action est Extinguish a tous iours.

Et sur mesme le reason, condition que done title de Reenter en terre est Extinguish per purchase del terre, ou part de ceo. 8. H.7.8.b. 33. H.8. Br. Extinguishment, 49. issint Garraty est Extinguish per reenfesment, ou discent del terre al mesme le person que ad le Garrantie, 40. E.3.13.

3 Choses issuant ou prouement hors del terre, ou prise & en sur terre, sont de 3. Kindes: & sur ceux different Kindes de choses, surdont ceux differences.

1 Si les choses ont leur Originall & commencement hors del terre, & nemy aliozs, & sont due en respect del terre tantum, & sont part des profits de terre, tiel choses seront tous fois Extinguish per unitie de possession, si home ad equal estate, & un droit, en ambideux ensemble de cest nature est Seigniorie & reall seruices, 3. Henr. 6.1.a. 40. Edw. 3.40. b. Little 49.2. 122.b. 34. Affis. placit' 15. Rent charge. Littleton 48.b. Dier 140.b. Common. 11. Hen. 4.5.a. 24. Edw. 3.25.b. Chimin, 21. Edward. 3.2. 11. Henr. 4.5.a. Et 2. reasons de cest rule fueront mise: un, pur ceo que le chose que est extract hors de terre, quant ceo vient al terre arriere, terra naturellement

Le Case de Proxies.

ment extinct, car est, Reuolutio, ad materiam primam dont viennent le natural Extinguishment, cibien del home, que de tous autres Terrestriall choses. Le aut plus legal reason est, que cestuy que ad tous les profitsz entierment, ne terra dit d'auer part ds profits, car part est confound en le tout, & pur ceo hōe ne poet auer seignioz, rent, common, ou chemin en son terre demesne.

2 Mes del autre part, choses que ne sont issuant hors del terre, come parcel des profits del terre, mes sont deriue alioz, & due pur autre respect, coment que sont prise & eu deins certaine terre, vncors, vntie de possession ne Extinguish tiels choses. De cest nature sont tous franchises: come si hoī ad Warren ou Purliu en le terre de vn autre, & apres purchase la terre est vntie de possession ne Extinguish les franchises, mes il auera euz en la terre demesne. 28. H.8. Dier 30. b. 16. Eliz. Dier 327. a. 35. H.6. 56. a. issint est de Waife, Stray, Wreck, Leer, &c.

3 Surp, coment que chose soit part des profits de terre, et payable p tiel person tantum que ad le terf, vncors si tiel chose ad son commencement & originall pur ascun Personall respect, & nemp en respect del Terf, & issint le person est solenit charge, & nemp le Terre, tiel chose ne terra subiect al Extinguishment per vntie de possession: & de cest nature sont Annuities, Dismes, Proxies.

1 Si Annuite soit grant en fee per apt parols, de charger l'heire, ou succesor, coment que le heire ou succesor ne seront charge sans Allets de terre, vncors, si grantee del Annuite enter en cest terre, ceo ne suspend, ne Extinguish le Annuite: car le terre n'est charge, mes le person en respect del terre, car si le terre fuisse charge, ne serroit Annuite tantum, mes rent charge, & serroit recouer per distresse & auoioz, quel remede la ley ne don pur vn meere annuite. Surp sur assignement ouster de tiel annuite, attournant serroit necessarie, que ne besoigne sur assignement del annuite, come est note per Yaxley 21. H7. 1. b.

Cest point est fait plus cleere, 10. E. 4. 10. a. Abbe port Scire facias vers vicar, sur Judgement en Annuite en vers le predecessor del vicar, le defendand dit, que le Annuite issint hors del Mannour de B. & les dismes, oblations, & obventions del vicarage, quel mannoz & dismes sont le vicarage,

Le Case de Proxies.

6

rage: Et que le Pl. ad enter en 43. acres parcel del mannoz, et ad pris les dismes, Judgement sil execution doet auer. Et tout le Court tient, que n'est plea, pur ceo que cest recouery fuit sur bziese de Annuittie: car en bziese de annuittie le person solement est charge, et n'empe le terre, per que adire, que il ad enter, en la terre, ou per son suit appiert que le rent ne issuit hors del terre, n'est plea. Et est auxy la resolute, que en Annuittie vers Abbe. sur title de prescription, n'est plea, que le Pl. ad enter en parcell des possessions del Abbey. Et en annuittie vers heire, coment que il ne serra charge sil ne ad per discent, vncoze n'est plea, adire, que le Pl. ad enter en le terre descendue.

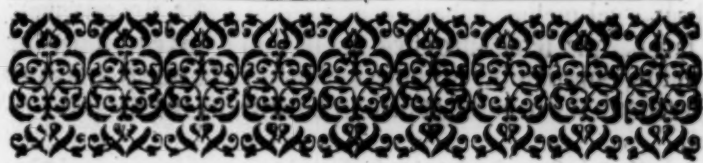
Mes 21. Henric. 7. 1. le case est plus fort: Person del Eglise fuit charge oue annuittie al auter Person per prescription: le Personage, hors de quel l'annuittie fuit payable, fuit appropriate al Priorie des Aliens, quel Priorie effeant supprime per Edw. 3. fuit grant per Parliament al Henr. 5. Apres Edw. 4. graunt le Personage impropriate al Dean de Saint Stephens, & que bziese de Annuittie est port p l'Person que auoit l'annuittie p prescription. Et l'opinion d'l Court la fuit, que l'annuittie n'est extinguis par le graunt del Personage al Henr. 5. p Act de Parliament, coment que ne soit Sauing de ceo, & que cest annuittie n'est done Inclusive oue le Rectorie, car le Rectorie ne fuit charge oue le annuittie, mes le Person del Rector tantum. Et coment que le payment de cest Annuittie soit suspend en maines del Roy, vncoze quaut le Roy ad graunt le personage ouster, serra reuue. 2. Quaut al Dismes, ceuz sont part des profits de terre, & sont prouenant, et renouant, de, et hors del Terre, vncoze ne seront extinct, per vntie de possession, pur ceo que sont Originalment due en Personal respect. Car le Ignorance, & Weakensse des lay persons, que besogne de auer Instruction, et confirmation en matter de Religion, fuit le Original cause del payment de Tythes. Et le Person de elglise ne clame Tythes en respect del terre, mes en respect del person de parishioner. Et que vntie de possession ne extinguis Tythes. Vide 30. H. 8. Dier 43. 32. H. 8. Br. Dismes 17. Cest case de Dismes est vn Paralell del case de proxies, & concurre oue ceo en tous points. Car sicome Instruction fuit le cause de payment des Dismes, issint Visitation

Le case de Proxies.

tation que fuit toutz soitz acompaigny oue instruct Lintl.ca. de Frankalmoigne 30.b. fuit la cause d Proxies. Et sicome dismes sont oze due et païable al lay persons qur ont purchasé un p-ppriate Rectozies, comt que ils ne donont aucun Instruction, issint Proxies sont due et païable al Ordinariez hozs del im-ppriations et Religions measons dissolued, comt q leur Visitation cessa. Et sicome nul poet prescrire d non Decimando, come est communement dit in nre Liures, issint le Cannon *Ley ad vn rule*, Qd nulla est aduersus procuracionem præscriptio. Instit. Iuris Canonici lib. 2. cap. de Censibus. Et p i Proxies, q ressemblont Tithe in aut pointz, poet est bñ compare a eux in cest point, viz. q ne seront subiect al Extinguishment p bñtie de possession.

Cest case dependoit plusoz Termes sur demurrer, q fuyt ioyne in tēps de Sir Edmund Pelham chiefe Baron, s adiudg in temps de Sir Humphrey Winch. Et fuit argue p le Attornei generall p le Roy, et p Henric Linch del midle Temple, p Sir Ambrose Forth.

Mich



Mich⁵. Iacobi, in Banke le Roy.

Le Cafe del Customes payable
pur Merchandises.

Information fuit exhibite en
Banke le Roy, per le Atturney general,
vers le Ma^{or}, Viscounts, & Citifens de Wa-
terford, en que il monstre, que le dit Ma^{or},
Viscounts, & Citifens, pur le space de vn an
deuant, ont receiue, et conuert a leur prop^{rie}
bse, le Grand & Petit Customes, & le Subsidie
de Pondage, de toutz merchandises, importes & exportes, en
de le Port de Waterford, & que ils ont auz fait & ordeigne vn
Customier, ou Collector des Customes, vn controller des Cu-
stomes, vn Searcher, & vn Gageor, deins le dit port, al preiudice
del Roy, & sans aucun Garrant : et sur ceo il prie p^{ro}cesse vers
le dit corporation de faire euz benier et responder, Quo warrant
ils ont priez les ditz customes & Subsidie a leur prop^{rie} bse, et
ont create & ordaine les officers auantdit.

A cest Information ils pledont vn speciall plea, en que
ils iustifient le receiuing des ditz customes & Subsidie, et le
ordeigning des ditz Officers, per vertue de 4. General Char-
ters.

Per le primer charter, dat 8. Nouembris, Anno Regis
Iohannis, nono, Le dit Roy grant al citizens de cite de Water-
ford (que adonques fuyt leur nomme de corporation) Cu-
stumam vocat le Murage, de omnibus rebus venalibus &
Mercimonijs, infra dictam Ciuitatem emptis, seu venditis,

B

ira

Le Case de Customes.

ita bene, & integre, sicut Burgenſes villæ ſuæ Briſtoll habebant, vel melius habere conſueuerunt. Et ilſ auerront in facto, que les Burgeſſes de Briſtoll, al temps del dit Graunt, auoient le dit cuſtome de Murage, de tous chosẽs et Merchandiſes achates et vendues deins le dit Wille d Briſtoll.

2 Per le ſecond charter dat 6. Maij, 1. Henric. 5. le dit Roy graunt al Maior, Bailiſes, & citizens del citie de Waterford (per que noſme ilſ fueront donques incorporez) cuſtumam eiufdem ciuitatis vocat. Le Corquet, capiendam per manus dicti Maioris & Balliuorum imperpetuum abſque aliquo computo, &c.

3 Per le tierce charter dat 12. Maij, 3. Henric. 7. le dit Roy graunt al Maior, bailiſes, & citizens del citie de Waterford, & ſucceſſoribus ſuis, quod ipſi & ſucceſſores ſui, & eorum quilibet, ac omnes & ſinguli ciues & inhabitantes eiufdem ciuitatis Waterford, qui tunc erant, & qui pro tempore futuri eſſent, & eorum quilibet, pro bonis catallis & merchandiſis ſuis quibuſcunque, infra ciuitatem ſuam Waterford præd. ac portum, præcinctum, & libertates eiufdem, & in omnibus & ſingulis alijs portibus, creeijs, & locis, infra terram ſuam Hybernæ, de noua cuſtuma, viz. de præſtatione ſine ſolutione duodecim denariorum de libra, Pondagio vulgariter nuncupato, erga dictum dominũ Regem, hæredes, & ſucceſſores ſuos imperpetuum ſint quieti, exonerati.

Et vt Maior concuſus tam hominum quam merchandiſarum ad eandem ciuitatem poene in extremæ deſolationis & paupertatis abyſſum deductam, de cætero conſuat & accreſcat, vltorius dedit & conceſſit præd. Maiori, Balliuis, & ciuibus, &c. Quod omnes & ſinguli mercatores, & homines, tam indigenæ, quam alienigenæ, & eorum quilibet, ad prædictam ciuitatem ſuam Waterford, ac portum & præcinctum eiufdem cauſa mercãdizandi venientes, pro catallis & merchandiſis ſuis quibuſcunque, infra ciuitatem prædictam, & præcinctum & libertates eiufdem, de dicta noua cuſtuma, ſiue pondagio, erga dictum Dominum Regem, hæredes, & ſucceſſores ſuos, ſimiliter ſint quieti & exonerati imperpetuum.

4 Per le 4. charter, dat 8. Februar. 11. Elizabeth. La dit Roigne grant al dit Maior, Bailiſes, & citizens, & ſucceſſoribus ſuis, quod imperpetuum, annuatim, de ſeiſpis eligere, valeant, & poſſint,

possint, Scrutatorem, Geageatorem, & alios officarios & ministros quoscunque, infra eandem ciuitatem & libertates eiusdem, vsuales & necessarios, oue auerint que le customer & controller de customes fueront necessarie officers deins le dit city, p ceo que le Roy H. 5. p son charter auantdit, ad grant a eux le Cocquet custome. Et ils concludont leur plea, que per le dits Warrants, ils ont receut les dits customes et subsidie de Bondage, a leur proper vse, & ont fait et ordaine les dits officers deins leur citie. Et sur cest plea le Atturney ol Roy demurre en Ley.

Et en arguist de cest demurrer, 2. principal matts fueront consider; 1. quel maner de duties, customs, & subsidies sont, et leur originall & difference. 2. Le quel les dits charters sont sufficient warrants al corporation d Waterford, a receuier les dits customes et subsidies a leur proper vse, et de faire customer, controller, seacher, &c.

Quant al primer matter, pur le explanation de cest learning de customes, suit primerment obserue. Que les duties payable al Roy hors de marchandises exported ou imported, sont de 3. kinds: 1. Customs: 2. Subsidies: 3. Imposts ou impositions. Queux fueront define, & diuide en cest maner.

Customs sont duties certaine, & perpetuall, payable al Roy come enheritance de son Cozone, p marchandises, transports de trauers le Mer, del vn Realme en auter. Car p choses vendible p voy de merchandise, caries de vn port, al auter port, deins mesme le realme, p mer ou p Terre, nul merchant est tenu de passer aucun Custom. *P. M. H. de Mari. pt 2. cap. 6. in Hargraves L. T. pa: 76.*

Ceux duties appell customs sont diuide en 3. kinds.

1 Magna & antiqua Custuma.

2 Parua & noua Custuma.

3 Prisage & Butlerage.

Et en tous ceux la Cozone ad vn certaine & perpetuall enheritance.

1 Le graund & ancien custome est payable hors d nature ou homebred commodities de 3. Sorts: viz. Woolle, Woolfels, & Hydes. Et est certainy vs d, bis d, pur vn sack

Le Case de Customes.

de wool. vij. s. 8. d. p 300. woolfels, 6. s. 8. d. p vn Last de Hyde, xiiij. s. 4. d. Et est destre note, q chescun sack d wooll contain 26. stone, et chescun stone 14. pound, & q l Last de hydes est 20. dihar, & chesc dihar x. hides.

Ceo est le ancient custome payable p chescun Denizen p l exportation des comodities auant dits: mes les merchants Strangers payont vn tierce part plus, p remission de prizes, & aufg priuiledges a eux grants p le chart de 31. E. 1. Dyer 1. Eliz. 165. b.

2 Le Nouel & petit custome est 3. d. de le pound payable p Merchants Strangers tantsolement, p tous commodities p eux impoyted & expoyted come est expresse in l dit chart de 31. E. 1.

3 Prisage. est custome prise de wines d tous lozts, et est en certenty, 2. tunnes de Wine hozs de chescun Pief ladé oue, 20. tunne ou pluys, l vn tunne destre prise deuât l mast del Pief, & l aut darriere le Mast. Et p ceo q cest custome est part del merchandise impoyted, & Prise in precie est appel Prisage.

Et cest custome de Prisage fuit payable en Engleterre p tous merchants Denizens, & Aliens, deuant le dit chart de 31. E. 1. p q le Roy remise al Merchants Strangers tous prizes: & en mesme le chart est expresse que en consideration de ceo, les Merchants Strangers ont grant d payer al roy & ses hies Nomine custome, 2. s. de quolibet Dolio vini, quod adducunt vel adduci facient infra regnum, & c. q l custome d 2. s. del tunne, est oze, en Engleterre appel Butlerage, & payable la p tous Merchants Strangers, vi. stat. de extreat. ad Scacc. 15. E. 2.

Et ceo est le nature de ceuz seiall Duties, qur sont proprement appel customes,

Pur le Originall de ceuz customes.

1 Le dit auncient & graund custome est parcel si auncient enheritance de la Cozone, & cy auncient que la Cozone mesme. Inheret sceptro, & est due de common droit. et per prescription, & nemy per graunt ou beneuolence des Merchants, ou p Act de Parliament. Dyer 1. Eliz. 165. b. Et ceo primerment fuit raise hozs del Statute, prover. et primer commodities del nostre Pais, viz. wool. woolfels, et Hydes, queuz accroissent per les auers depasturant la terre,

terre, sauns industrie des inhabitants, & sont Reuerâ les
 Naturall riches de Engleterre. Car inuention & industrie
 des homes, ont troue & produce Tynne, & Plombe, & Drapes,
 & Iron en feneral Ages. Des les 3. p^{ri}mer commodités,
 viz. Wooll, Woolfels, & Hydes fueront properment & anti-
 entment dit, les Staple commodités del Realme (coment
 que per le Statute de 27. E. 3. c. 1. Plumbe soit auy declare
 destre vn Staple commodité, & pur ceo cestuy que oblige
 en Statute staple, conuist que il est indebt, Pro lanis, corijs &
 plumbis, &c.) Et fueront appell Staple commodités, pur
 ceo que fueront dest^{re} port al Staple del Roy, destre exported
 la, & nemy aillors. p^{er} le melior Collection des Customs due
 al Roy, Vide les Statutes de 27. E. 3. cap. 1. & 43. E. 3. c. 1.
 On est expresse en queux Willes de Engleterre, Ireland, &
 Gales les Staples del Roy, fueront establi^{sh} pur le exporta-
 tion de ceux commodités. Et appiert auy per diuers sta-
 tures, que Caleys fuit ascun foits appoint pur vn general
 Staple, vncoze ceo fuit toll & ousted arrere, & les anti^{et} Sta-
 ples reestabli^{sh}.

Des pur ceux, 3. p^{ri}mer commodités tantselement viz.
 Wooll, Woolfels, & Hydes, le dit anti^{et} & certaine Custom
 fuit due & payable. Car pur Plumbe, coment que fuit dit vn
 Staple comodité, le petit Custome de 3. d. sur le pound tan-
 tum fuit pay, come appiert per le statute de 27. E. 3. cap. 1.
 Et in libr. Rubro Scaccar. hic fol. 8. a.

Et que le Roy ad estate de enheritance en cest Graund &
 Antient Custome, appiert pleinement. 31. H. 8. Dier 43. b.
 ou est dit, que Custome est inheritance del Roy per course
 de Common ley, & Subsidie est vn taxe asselle per Par-
 liament. Vide auy, 1. Ma^{re} Dier 92. ou le Roy E. 6. ad grant
 licence al vn Marchant stranger, de transporter tous Merch-
 andises payant pro Customis & subsidijs tot & tantas de-
 nariorum summas, quor & quantas ascun Anglois marchand
 ou Denizen payeroit, & non vltra. Et fuit resolu^e per tous
 les Justices, que apres le mozt del E. 6. le grant fuit bone
 pur le Custome, & boyde per le Subsidie: pur ceo que le
 Roy ad enheritance en le Custome, come prerogatiue annex
 a son Coron, & en les Subsidies il ne auoit estate forsque
 pur son vie, per act de Parliament. Mint. 9. H. 6. 12. a. La
 Roigne ad part de la Dow^{er} assigne, Ex magna Custuma

Le Case de Customes.

de London : que est argumēt, que le Roy ad greinder estate en le Graund Custome que pur son vie demesne : Et si ceo, le opinion de Babiugton la, que le Roy nad enheritance en le Grand Custome, mes en le Petit custome tantum, ne ad aucun colour de reason. Ilint per le estatute de 18. Hen. 6. Est prouide, que les Gages des Justices serront Perpetuallint pay hors des primer deniers prouenants des Customes, que ne puisse estre, si le roy ne auoit estate de perpetuitie en les Customes 1. H. 7. 4. a. Darrainement, est un rule infallible, que si home ad chose de common droit, & per prescription, que il ad estate de fee simple en mesme la chose car de particular estate le commencement poet, & doit estre monstre, 2 1. H. 7. 15. a.

Mes pur ceo que chescun chose que est due de comunon droit, et p prescription, doit auer reasonable cause de Commencement, fuit note & obserue que, cest Custome fuit primerment pay al Cozone, pur 4. principall causes, on reasons.

1 Pur Conge de departer le Realme, & de carrier les commodities del Realme hors de ceo, Vide Dier 1. Eliz. 165. b. & le estatute de 18. E. 3. cap. 3.

2 Pur le interest que le Roy ad en le Mer, & en les Branches de ceo, 22. Affis. pl. 93. 15. Eliz. Dier 326. b.

3 Pur ceo, que le roy est Gardein de tous les Ports & hauens del Realme, qui sont Ostia seu Ianua regni, & le roy est Custos totius regni.

4 Pur wastrage, & protection des marchants sur le Mer, vers les enemies del Realme, & vers Pirats, qui sont common enemies de tous Nations.

2 Le petit & nouel Custome payable per Marchant strangers solement auoit commencement en temps, Ed. 1. Car deuant cest temps les duties payable per Marchant strangers si tous foreign commodities imported (except wines) & pur tous Native commodities exported (except les dits Staple wares, de Wooll, Woolfels, & Hydes) fuerot incertain. Car le roy per son prerogative Prisot a son vble, & a son price, tant & tiels portions de leur marchandises, grant si ad besoigne, per nomine de prises, queux fueront tous foits incertaine.

Mes le Roy E. 1. per son Charter dat 1. Februarij an 31. de

payable pur Merchandises.

10

De son Roigne, en fauor des Marchant strangers, & d tra-
her leur commerce, Remit a eux tous prises, et graunt a
eux diuers autres Priuiledges. Et pro supradictis libertati-
bus obtinendis, & prius remittendis (ceux sont les parols del
charter) supradicti Mercatores vniuersi & singuli pro se, &
omnibus alijs de partibus suis, concorditer & vnanimiter con-
cesserunt q'ils payeront al roy, & ses heires Tres denarios de
libra p tous Merchandises importes ou exportes p eux,
come est expresse plus particulièrement en le dit charter, que
est destre trouue en le office de chiefe Remembrancer en le
Eschequer del Engleterre, & in libro Rubro Scaccarij hic. Et
cest charter del E. 1. en tous points, fuit ratifié & confirme
p act de Parliament, 27. E. 3. c. 26. Et ceo est le original
del petit Custome.

Mes est destre note, que cest Petit custome p foraigne
commodities, fuit accept per le Roy, quaut forsque petit
quantity de tiels foraigne wares fuit import en Engleterre.
Car en temps Edw. 1. Et apres ceo, en temps Edw. 3. les
natiue commodities de Engleterre exportes fueront de
greindre quantite & value per 2. parts de 3. al meins,
que les foraigne marchandises importes: per que le roy
E. 3. rasoit cy grand reuenue hors del natieue commodities
de ses dominions: que est note de bone husbandrie en cest
roy. Car Oportet Patrem familias Vendac esse, & non Em-
cem. Come Caro le seignior disoit. Mes ors est tout cotras-
ry: Car a cest tēps, le Outgate est meind que le Ingate: les
foraine wares importes sont de greindre quantite & value
per 2. pts que nostre natieue commodities exportes. Que
est graund honte a nostre Nation, destre issint en amor oue
les Mercery & Grocery wares imports per strangers, & d
expender sur eux plus que le value de tous les Staple &
reall commodities de nostre Pais: que sera en fine le ruin
del Commonwealth.

3. **Pysage de wines**, est auxy custom due p prescripti-
on, & parcel del antient enheritance de la corone. Et que le
Roy ad enheritance en le Pysage de wines, appert per
les charters graunts al citzens de London, & al euy de
les Cinque Ports destre discharge de Pysage en tous
Ports. a tous iours, Vide statut 1. H. 8. cap. 5. Et le com-
tee de Wyndesore ad estate de enheritance en le Pysage de
wines

Le Case de Customes.

toines en cest Realme per graunt del Roy. Et le charter de London fuit allow en cest point en le Escherquer de Engleterre, 44. Eliz. Mes le questio la fuit, si un Citisen de London q ne ad famei, ne pay Scot & Lot, mes sojourne en le meason dun autre, auera le benefit del dit Charter. En le argument de quel Case, Coke donques Attozney Generall misoit cest difference de citisens, viz. que il y ad citisen Nomine, citisen Re, & citisen Re & nomine. Mes fut resolué que solement le citisen Re & nomine, viz. cestuy que est freeman de London, & est auxy enhabitant, & pay Scot & Lot la, serra free de Prisage per le dit Charter. Pur le originall de Butlerage que est pay per Marchant strangers, ceo auoit commencement per le Charter de 31. E. 1. come est auantdit, & est limit desire pay al roy & ses heirs en perpetuitie.

Et ceo est le Nature, Originall, & Difference de les auintient Duties payable pur marchandises, queux son proprement appell Customes, & sont le enheritance de la Courone.

Subsidies auxy son duties payable pur marchandises exported & imported, mes sont grant per act de Parliament Dier 31. H. 8. 43. b. 1. Mar. Dier 92. a. Et sont de 3. diuers sorts, accordant al diuersite des commodities, & sont appell.

1. Aydes ou Subsidies, esteant grant hors des dits natue commodities, viz. Wooll, Woolfels, & Hydes, ultra & prater le antient Custome auantdit.

2. Tunnage, grant hors de Wines de tous sorts, ultra & prater le Prisage, & le dit Custome de 25. de Dolio grant per le Charter de 31. E. 1. oze appell Butlerage.

3. Pondage, grant hors de tous commodities imported & exported, except Wines, & les Staple commodities auantdit, & payable per Merchant strangers, ultra & prater le Petit custome.

Pur le Originall de ceux duties.

1. Aydes & Subsidies payable hors des dits Natue & Staple commodities exported, ne fueront souent fois graunt per Parliament, deuant le temps del E. 3. mes a cest Roy pur maintenence de ses Guerres en France, per Parliament

payable pur Merchandises.

II

ment, 14.E.3. (que fuit le p^rimer an de son reign d France) vn Aid ou Subsidy fuit graunt de 40. s. hors de chescun Sacke d Wool. 40. s. d 300. Woolfels, & 4. l. hors d chescun Last de Hydes. Et ceo de continuer pur vn an tantum, & que ap^res les Merchants paieront forsque l auncient custome.

Ap^res ceo p Parliament 13.E.3. vn Subsidy fuit grāt al dit Roy de 50. s. sur chescun Sacke de Wool. 50. s. sur chescun 300. Woolfels, & 5. l. sur chescun Last de hydes.

Per Act d Parliament 31.H.6. vn Subsidie fuit grant al dit Roy de 43. s. iiii. d. hors de chescun sacke de Wool, et 43. s. iiii. d. de chescun 240. Woolfels: mes ap^res en mesme l Parliament cest subsidie fuit abate, & reduce al 33. s. iiii. d. pur sacke de Wool, & 33. s. 4. d. pur 240. Woolfels, & l payment limit pur 5. ans tantum. Ilint que ceur Aids ou subsidies ne fueront del vn certaine quantite, ou continuance, jusques al temps del E.6. a quel Roy, en le p^rimer Parliament de son raigne, fait grant vn Subsidie de 33. s. 4. d. de chescun Sacke de Wool 33. s. iiii. d. p chescun 240. Woolfels, & iij. l. vii. s. viii. d. de chescun Last de Hydes exported per Denizens. Pur chescun Sack de Wool exported p Aliens, iij. l. 6. s. iiii. d. et pur chescun 240. Woolfels, 3. l. 6. s. 8. d. & pur chescun Last de Hydes, 3. l. 13. s. 4. d. Et cest subsidie grant de continuer durant le vie naturall del roy: & puis le mort de cest roy, mesme le subsidie ad estre graunt al M. Marie, M. Elizabeth, & al nostre Seignior le roy, que oze est, durant lour seuerall vies per seuerall Acts de Parliament.

2 Tunnage, que est subsidie hors de wines d tous sorts, fuit p^rimerment graunt per Parliament 5.R.2. ou 2. s. de chescun Tunne d wine destre imported en Engleterre, fuit graunt al Roy pur 2. ans, & ceo fuit pur maintenance d vn flete sur le Mer, a sup^resser les Pirates. Mes ap^res, p Parliament 3.Ed.4. Tunnage fuit graunt al cest roy pur terme de son vie naturall en cest man^rer, viz. 3. s. pur chescun Tunne de wines, & (ouster ceur 3. s.) pur chescun tunne de sweete wines, 3. s. plus. Vide statut. 12.E.4.cap.3. & cest subsidie fuit ap^res grant al H.8. & E.6. oue cest additon en temps E.6. que de chescun Awme d Remish wine aux p^res. d. fra pay: & puis le temps del E.6. cest subsidie d Tunnage ad

Le Case de Customes.

ad estre grant en Engleterre p^r seuerall Act^s de Parliament al *M. Mary*, *M. Elizab.* & al nostre seignior le roy que oze est, durant leur seuerall naturall vies.

3 Pondage que est subsidie grant hors de tous commo-
dities expozted et impozted, except wines, et les auntient
Staple wares, vt supra, & paiable p^r tous merchants De-
nizens et Aliens, est vicesima pars del valew des Merchan-
dises, viz. xij s. de le pound, et fuit p^rimement graunt per
Parliament en Engleterre 31. H. 6. durant le vie de cest
Roy: quel graunt fuit immediatement resume. Mes aps
ceo, viz. 3. E. 4. cest subsidie de Pondage fuit graunt al dit
Roy durant son vie: vide stat. 12. E. 4. cap. 3. & puis mesm le
Subsidie fuit graunt al Hen. 8. durant son vie, & mesme le
grant ad estre renew al E. 6. *M. Marie*, *M. Elizabeth* & al no-
stre seignior le roy que oze est, durant leur seuerall vies, p^r
seuerall Act^s de Parliament en Engleterre.

Mes icy en cest realm de Ireland le subsidie de Pondage
ad commencement en cest manner, Anno 14. Ed. 4. vn fra-
ternite des Arms fuit erect p^r act de Parliament, consistant
de 13. plus honozable & loialment disposez persons en les
Counties de Dublin, Kildare, Meth, & Louth: Et vn certaine
number des homes a chival, oue leur pages et des archers
a chival fuit assigne a eux, oue certaine entertainement et
Gages, paiable al chescun des dits homes a chival, et ar-
chers. Queux Freres des Armes, oue leur dit retinew front
tous temps p^rist a defender le English pale encount Re-
bells et Outlawes. Et p^r l^r paiement des gages des dits ar-
chers, & homes a chival, fuit enact, que les dits Freres des
Arms & leur successors aueront, xij s. de le pound de tous
merchandises impozted et expozted, hors de cest Terre de
Ireland, Hides & Wines, & les merchandises del freemen
de Dublin & Drogheda solement except.

Après 10. H. 7. en le Parliament tenuz p^r Sir Edw. Poy-
nings fuit enact, que p^r tant que le dit xij s. de le pound grāt
al dit Fraternity (que est la appel le Fraternity de S. George)
fuit expend et conuert al p^rivat bles, et nemy en discharg
de publicke suice, p^r ceo le Roy aueroit le dit Pondage pur
5. ans ensuant, et q^t tous autres grants fait del dit Pon-
dage soient repeale et adiudge void, &c.

Les dits 5. ans estreant expire, viz. Anⁱ 15. Hen. 7. nouel
Pon-

payable pur Merchandises.

12

Pondage fuit graunt per act de Parliament al dit Roy ses heires et succelloz in perpetuy, oue vn Prouiso, que cest act ne serroit preiudiciall al freemen de Dublin, Waterford, & Drogheda esteat free p Birth, Mariage, ou Prétishood, &c. Et issint le Roy ad estate de Enheritance en cest Subsidy De Pondage en Ireland, ou il ti ad ceo forsque durent son natural vie en Engleterre.

Imposts ou Impositions sôt l Tierce kind de dutiez payable pur marchandises, & sont ascunfoits rates & assesse per Parliament, & donques sont en nature de Subsidies, & ascun foits sont impose per Prærogatiue Royall, pur supporter les necessary charges de la Corone, & donques, Nihil inagis iustum est, quam quod necessarium est, come vn auncient Senatoz de Rome disoit.

Le Impost sur Wines in cest Realme, fuit pzimermt assesse p Parliament, & limit desre pay pur certaine terme d'ans, quel esteant expire, ceo est oze continue per prerogatiue del Roy.

Ceur, sont les duties payable al Roy de Engleterre p l'exportation & importation de marchandises. Et comment que cest reuenue del corone ad estre grandment improoue en cest darreine age, vncoze si les customes, subsidies, & impositions d'Engleterre sont compare al duties et paiemens de cest kind, en fozein cuntries, serront troue desre moderate & soit reasonnable.

Les auncient Romaines (car cest reuenue payable hors d' marchandises, est le plus, auncient, honozable, et reasonnable que appertient al ascun Prince ou State) auoent ceuz duties p nosme d' Vectigalia, a mercibus euectis, & inuectis, qur l'Emperour Iustinian appel Exagogica & Isagogica. Et touchant la nature d' euz, les rules de nostre ley sont agreeable al ceuz d' la Imperiall ley.

1 Nous diomus, que custome est l' auncient enheritance de la corone D'engleterre, ilz dient, Vectigal origine ipsius Cæsarium, & Regum patrimoniale est. **2.** En nostre Ley, Wafrage & Protection de Merchants sur le Mer, est vn des pzincipall causes de paiement de ceuz duties: et en la Ley del Empire, Primaria Vectigalium causa, ac ratio fuit

vt

Le Case de Customes.

vt plana, tutaque mercatori pretereunti itinera prestarentur. Et Plin. Lib. 19. c. 4. Dit, Merces pretiosæ, vt ex India, Arabia, Æthiopia, tuto à mercatoribus in Europam conueherentur, necessario classem parandam esse aduersus Piraticas incursiones. Inde maritimi exercitus alendi causa, Vectigal Rubri maris institutum.

Et cest Vectigal, octaua rerum pars erat, & pur ceo fuit vn sozt des Publicanes, queux fueront appell Octonarij: mes les Merchants queux auoent le priuiledge de citizens de Rome, paieront forsique vicesimam partem ou Pondage, & les Publicans ou collectozs de cest custome, fueront appel Vicesimarij.

Et ceo fuit le auncient custome payable per Merchants delas le estate del Empire. Et en Britanie, deuant que cest Iland fuit fait Province subiect al Empire, est credible que les Merchants payeront greinder Rates pur Exportation des commodities, que ils payont ore. Car Strabo dit, Britanni Vectigalia tollebant grauia carum rerum, quas in Galliam, tamen breui maris trajectu, importabant.

Mes a cest iour, est certaine, que en auters Realmes de Europe, les customes sont plus haut et heaby que nostres.

En Spaine, le Roy prist octauam partem de ses proper subiects, mes à Merchants Strangers il prist ascū foits le cinque part, ascū foits le quart pt del value de leur marchandises.

En France, les customes payable pur Strangers amontant al huit de Cent. Bodin. de Republ. lib. 6. ca. 2. Mes les impositions & gabels q le Roy la prist de ses subiects p Sel, Wine, & Brees, et tous choses vendible sont extraordinaire, et sozt excessiue. Ilint poet est dit del grand Duke de Tuscany, & auters States de Italy.

Le grand seignior à Turkie prist le tenth pt de Merchāt Strangers, et le vint pt ou Pondage de ses subiects.

Quant a les Officrs queux ont a faire oue les customes.

1 Le custome fuit le plus auncient, & al pimes le sole Officr, que fuit le collectoz des customes, et accountable p eux al Roy. 9. H. 6. 12. b. 1. H. 7. 4. b.

Après

Payable pur Marchandises

13

2 Apres en aid de customer p trouver les conceallements et substractions des customs & subsidies, & p seiser merchandises forstited, le Searcher fuit ordaine.

3 Donqs, p ceo que le customer fuit accomptant al roy, mes ne puilloit est charge forsq p son proper liuer d Cocquets, ou son oath, controller fuit assigne a luy.

4 Darrainint, p discouer et pzeuent les frauds d touts eux, vn office de Superuisor ad estre erect.

Cur diuersities touchant la nature de les senecal duties payable pur marchandises, estreant eclare & agreee, le matter fuit consider, viz. Si les points de les senecall charters plead, come auant est monstre, p le corporation de Waterford, soient sufficient warrants a eux, de recevoir, a lour proper vse, les dits customs & subsidies, & de faire les dits officers d customer, searcher, et controller des customs.

Quant al prier charter de le Roy Iohn, p que il grant al dit Corporation, Custumam vocatam Le Murage, de omnibus rebus venalib^r infra dictam ciuitatem emptis seu venditis, ad bene & integre sicut Burghenses ville de Bristol habebant, &c. fuit resolu, que per ceux parol: nul custome ou subsidie est grant a eux, pur diuers reasons.

1 Pur ceo que Murage nest rien que Toll, payable p reparation des Mures, hors de choses vend en Market ouert per retaille, N.N.Br. 228.d. ou custome est pay pur marchandises imported ou exported a trauers le Mere, et vend en grosse. Et est aussy cest difference, que tel Toll esbent estre pay touts dits per cestuy que Achate le chose, et custome per Merchant que vend le chose. N.N. Br. 228. c. Et que Murage nest forsqe Toll appert per le Register, 159.2. En brief de Essendo quiet. de Theoloneo. Et per l dit charter 31.E.1. p que touts merchants strangers sont acquit d Murage, Damage, & Pontage, et uncoze ils paie le grand et petit custome. Vide aussy lehu Webbes case en le 8, part des Reports de le Seignior Cooke, 47.a.

2 Murage ne gist en grant, mes en prescription: car come aucun choses ne gist en prescription, mes en grant.

C

come

Le Case de Mixt moneyes.

come conusans de pleas, Caralla Felon. &c. 1. Henr. 7. 21. b. 9. Henr. 7. 20. a. Ilint sont auters choses que ne gisent en grant, mes en prescription, come d auer free Barren en auter terre, ou de prendre Murage, Pontage, ou Picage. 13. Henr. 4. 14. b.

3 Le Reference al bill de Bristoll, est incertain et void, pur ceo que nest tiel Wille ou Burgh appell Bristoll, en cest Realme de Ireland, et le Wille de Bristoll entend en le charter, esseant en Engleterre, le auerment que les Burgesles de Bristoll auoent Murage al temps de cest Graunt, ne poet estre try icy. Auzp ils doent auerre en leur plea que les Burgesles de Bristoll auoent tiel certain Toll ou Customs de chescun chose vende & achate deins le Wille, & que ils auoent ceo per graunt del Roy, car donques le Reference fuissoit al certenty. Come est tenus 20. Ed. 3. Fitz. A. uowrie 120. En Quo warranto port en Eyre, vers Bailiffs & comminaltie de Lancaster, ils pledont vn charter dl Roy Iohn, que graunt a eux tous franchises que le Burgh de Northampton ad, et pur ceo que nul franchise fuyt la expresse, ou monstre de Record, seisure fuit agard des franchises.

Quant al 2. Charter, p que W. 5. grant al Maior, Bailiues, & Citizens de Waterford, Customam dictæ ciuitatis vocat. Le Cocquett, capiendam per manus dicti Maioris & Balliuorum in perpetuum : et coment que fuit obiect p le Attorney Generall, que le cocquett nest forsqe acquittance ou Bill testifiant que le custome est pay, que fuit al pimes appell Cocquett, pur ceo que per tiel bill, le Merchant est de costuma quietus : Per quel parol le auient custome, esseant vn speciall enheritance de la corone, ne poet passer : et coment que fuit auzp obiect que custome est payable per chescun seuerall merchant Denisen & Alien, et pur ceo ne poet estre dit Customa dictæ ciuitatis : Nient obstant que soit limit desire prise per maynes del Maior & Baylives, vncoze l officer del roy, viz. le customer est charge oue ceo, & ils doent auer allowance per Petition, come est rule 1. H. 7. 4. 2. ou R. 3. ad graunt Licence al certains merchants a transporter laines, &c. Et de ceo de retenir leur customes, en cest case, nient obstant l dit grant, les

payable pur Merchandises.

14

les Customers fueront charge et accomptable pur les customs.

Uncoze fuit resoluë, que le antient Custome de Woolle, Woolfels, et Wydes fuit bien grant al dit corporation per les parolx de Custome vocar. le Cocquet. Car cest antient custome est communement appell. et conus, per nosme de le Cocquet Custome, en tous Ports de Engleterre, & Irelād. Et custuma dictæ ciuitatis serra entend custome payable pur marchandises in dicta ciuitate. Car fauorable interpretation serra fait de tielx graunts selonque le vsage et alloboance. 10.H.7. 14.a. Et pur ceo que le custome est graunt al euz, ils poent ceo collecter per leur proper officer, et le officer del Roy nest accomptable pur ceo, come en le dit case de licence de retainer, 1.H.7.

3 Quant al 3. Charter dat' 12. Maij 3.H.7. p que le dit Roy grant al corporation de Waterford, quod omnes & singuli ciues & inhabitantes dictæ ciuitatis, & omnes & singuli mercatores, tā indigenæ, quam alienigenæ de Noua custuma vocar, le Pondage, viz. de præstatione xij. denariorum de libra imperpetuum sint quieti & exonerati, &c. fuit resoluë, que cest charter ne fuit sufficient warrant al euz, de receiuer, a leur proper vsle, le Pondage de tous marchants, denizens, et aliens, deins le Port de Waterford. Et ceo pur 2. principall reasons.

1 Pur ceo que cest graunt tend al discharge de chescun particular Marchant, et ne dona le Pondage al corporation, 4.H.6.b.2. le Roy E.4. grant al Mayor et Burgesles de Orford, que ils ne serront Jures oue foreigners, ne foreigners oue ceuz, &c. Per totam curiam les Burgesles que sont impannell. quant ils sont demand desre Jures, poent monstrer le charter, et pleader ceo, mes nemy le Mayor et corporation: a mesme l'entent est 21.Ed.4.55. & 56. Le case de Norwich. Et si ceo fuit dit, que si le roy grant al Abbe que tous les possessions serront discharge d'Distmes grāt en Parliament (come le Rector de Edingtons case est 19. Hen.6.63.a.) Le Abbe en cest case, ne poet collecter les Distmes de ses tenants, et retainer a son prop vsle: Tant ou le Roy ad graunt al corporation de London, que les citizens de London serront discharge de Prilage, le corporation,

Le Case de Customes.

ration per force de cest graunt, ne prist le **D**yslage de les citizens. Mes chescun pticular home auera le benefict de le charter, il boet demander ceo. autrement nient.

2. Cest graunt fuit fait Anno 3. Henr. 7. a quel temps, le **D**ondage que fuit graunt p **P**arliament Anno 14. Edw. 4. al **f**raternity de saint George, come deuât est monstre, fuit en Esse. Mes apres, Anno 10. Henric. 7. cest grant al **f**raternity de saint George fuit repeale per auter act de **P**arliament, & nouel **S**ubsidy de **D**ondage grant al **R**oy p 5. ans. Apres quel temps, viz. 15. H. 7. un auter **S**ubsidy de **D**ondage fuit graunt al **c**orone en perpetuity, que est le **D**ondage oze en question, issint que le nouel **D**ondage que fuit grant per **P**arliament, 15. Henr. 7. ne pouloit estre graunt ou discharge p charter fait, xij. ans deuant, viz. 3. Henric. 7. Car quaut al **G**raunt en tiel case, est tenus 22. Edw. 4. Fitz. Graunts 29. en le **A**bbe de **W**althams case, que le roy ne poet grant ascun parcel del **D**ismes del **C**lergie, deuant que soit graunt per le conuocation. Et quant al **e**xoneration ou discharge en tiel case, cest point en le case de **R**ector de **E**dington, 19. Henr. 6. 63. a. N'est rule, ne resoluë. Mes admitt que le **R**ector en cest case la serroit discharge de **D**ismes per grant le **R**oy fait deuant le **P**arliament, vncore ceo ne serroit rule de cest case, pur ceo que en le graunt fait al **R**ector sont poiz de future temps, viz. que quant ascun taxe, tallage, ou tenth serroit graunt per **P**arliament. que il, ses terres, & chateux serront discharge. Mes cest charter de 3. Henric. 7. parle de **N**oua **C**ustuma de **D**ondage donques en Esse. Car ceo que est nouel, est nouelment past et nemy future. Et pur ceo cest charter ne ba en discharge de auter **D**ondage, que serroit graunt apres per act de **P**arliament. A cest entent, vide 34. Henr. 8. **D**yer 52. 2. ou est tenus que le **R**oy ne poet discharge penaltie del act de **P**arliament, que est desre fait en apres. Come ou roy grant licence al bn de transporter **B**ell **M**ettall, nient obstant ascun **S**tatutes fait, ou desre fait al contray: apres act est fait, que prohibyt le exportation de **B**ell mettall sur certaine paine: Le licence graunt deuant, ne dischargera cest penaltie. Mes la est dit, que le **R**oy poet dispenser oue future chose en que il ad enheritance. Mes al temps de cest charter graunt, viz. 3. Henr. 7. le **R**oy ne auoit enheritance

payable pur Merchandises.

15

heritance en le Subsidie de Pondage. Car le Pondage donques in Esse fuit grant al dit Fraternitie de S. George, quel grant esteant repeal, come est auantdit, nouel Pondage fuyt grant al roy pur 5. ans, Anno 10. Henr. 7. Et apres Anno 15. Henr. 7. le Pondage, oze en question, fuit grant al roy et ses heires per Act de Parliament. Mes si le Roy ad eue enheritance en cest Pondage al temps de cest charter grant al Waterford, viz. 3. Henr. 7. le Discharge, sans question, ad estre bone. Come le Roy poet grant que l'heir de son tenant ne serra en Gard, ou que son Tenant ne serra puny en cessauit. Car coment que ceuz sont future & casuell choses, bncoze le Roy ad enheritance en le Seigniori al temps 36. Henr. 6. 48.

Auxi en plusors cases, coment que graunt del Roy Extend al future Temps, bncoz serra entend des choses Presentes en Esse al temps del graunt. Come in 38. Hen. 6. 10. 2. Si le Roy graunt a moy liberties en tous mes terres, ieo auera les liberties en les Terres queux ieo auoy al temps del grant, et nemy en les terres queux ieo purchase apres. Ilint si le Roy grant liberties en tous mes Demesnes, & apres Tenancy escheat, ieo nauera les liberties en le terre nouelment escheated. Ilint si le Roy graunt Catalla felonum quorumcunque, & apres p Parliament, un act est fait Felony que ne fuit Felony deuant, le grauntere nauera les biens de person attainted de tuel Felony. Ilint ou l'Euesque de Durham ad iura regalia, & escheates de Treason deins son countie Palatine, il nauera les terres de Tenant en Caille attaint de Treason, queux sont forfait per le Statute de 26. Henr. 8. come est resolué, 12. El. Dyer 289.

Et si ceo fuit resolué, que cest charter que exponere les Merchants de Waterford de Pondage, in Anno 3. Henr. 7. ne poet estre extend si acquitter euz de nouel Pondage que fuit grant p Parliament An 15. Hen. 7. Mes q tous Merchants Denizens et Aliens payeront Pondage en ce port, forsque ceuz que sont exempt p le prouiso del dit Act de 15. Hen. 7.

Quant al 4. charter, concernant les Officers des Customs, fuit resolué que ou les customs et Subsidies remainont

Le Case de Customes

remainont en la Cozone, & ne sont bien graunt al dit coꝝ-
poration, le Roy mesme appointera les Officers pur le
collection et due answering de ceux Duties, nient ob-
stant cest charter, que enable euz de createer tiels Offi-
cers. Mes en case ou custome ou subsidie est bien grant al
coꝝporation, adonques le constitution de tiels Officers
appertient a euz, a lour officers poent entremeddler oue
taunt que est bien graunt a euz, et nient pluis, mes ou
lour charter va en discharge & exoneration tantum, ils ne
poent appointer tiels officers car ne sont necessarie en tiel
case.

Cest case dependoit plusors Termes en Bank le Roy
icy, ou les points auantdit fueront resolu: mes duant
aucun Judgement done en ceo, le dit cite de Wa-
terford, & les autres Maritimes cites, et Portz tolongs de
cest Realme, per speciall direction ~~transmittent~~
en Engleterre certain Agents, oue lour seuerall charters, al
entent que toutes questions queux ont estre moue touchant
les Customes & Subsidies payable al Roy pur Merchandises
en les seuerall Portz de Ireland, sur bieu des dits
Charters per les Judges en Engleterre, poent estre re-
solue & determin, sans auer fuit perensier le Roy, & les dits
Corporations.

Et sur ceo, Termino Michaelis 6. Iacobi, speciall letters
del Seigniorz de priuy Counsell fueront direct al Sir Lau-
rence Tanfeild cheefe Baron, Baron Heron, Sir Io. Doddridge
vn des Serjants del Roy, & Sir Henry Hobarte Atturney ge-
nerall del Roy en Engleterre. Et auçi al Sir James Ley don-
ques cheefe Iustice de Ireland, Sir Anthony Seintliger Master
del Rolls, & l'Atturney generall del Roy en cest Realme icy:
(queux seruitorz de Ireland adonques fueront present en
Engleterre, & attendant al Court, pur dispacch des autres
seruices) per queux letters, le dit Cheefe Baron, & les autres
fueront require, d'appeller deuant euz les dits Agents, &
sur perusall & consideration eu de lour seuerall Charters,
de certifie lour opinions & resolutions, en queux des dits
Citiez & port Townes, les Customes & Subsidies payable
pur Merchandises doent estre respond & pay al Roy, & en
queux les marchants Denizens, ou Aliens, doent estre dis-
charge

charge de paiement de ceux duties, & pur quant, &c.

Et accordant a cest direction, les dits Agents fueront appoyntz d'attendre les dits Referres, oue leur charters et oue leur learned Councell, al Serjeants Inne en Chancery Lane, al plusors iours en le dit Michaelmas Terme: & la deuant le Seignior chief Baron, et les autres, les questions et pointz auantdit, surdant sur les seuerall charters de Waterford, fueront moue, & debate, & resoluë, vt supra. Et diuers autres charters fueront produce, mes nul point de difficultie fuit moue sur aucun de eux. Tantsolement, Bolton Recorde de Dublin, insistoit fortment, sur vn antient charter del Henr. 2. p que le dit Roy ad grant Burgensibus de Dublin, Quod sint quieti de Theoloneo, Passagio, Pontagio, & omni consuetudine p totam terram nostram Angliæ, Northannia, Wallia, & Hyberniam vbicunque venerint ipsi & eorum Res, &c. Et il affirmoit, que les parols de Theoloneum, & Consuetudo, fueront apt parols d'acquitter les Citizens de Dublin de le Graund et Antient custome. Et pur le signification de le paroll Theoloneum, il cite le Text en Saint Math. Gospel, Cum autem prætergrederetur Iesus, videns quendam sedentem ad Theoloneum, &c. q est interpreté par la custome. Mes a ceo fuit dit, que pur trouver le signification de Theoloneum en cest case, ne besoigne de resorte al interpreters del Gospel, mes al interpreters del nostre Ley. Et que en nostre ley, le proper Terme ou Parol de Art que signifie tel Royall dutie que est payable pur Merchandises croissant le Mer, est Custuma, & nemy Theoloneum: quel parol Theoloneum, en nostre ley, signifie rien forsque vn Toll, & Toll (que est deuë del Theoloneum) n'est forsque vn petty Duty payable en Markets & faires, per cest que achate le chole, ou Custome est payable p Marchant que est vendoz. N.N.Br. 126.b. & p le Register, 260.a. vn difference perenter Toll & Custome payable pur Merchandises appiert. Car en le byesse d'acquitter les biens del Ecclesiasticall person de Theoloneo, Pannagio, Muragio &c. cest clause est mise, Num tamen merchandisas aliquas non exerceat de eisdem, issint le difference est apparant, & pur ceo il fuit ouer rule pur cest parol, Theoloneum.

Quant al autre parol, Consuetudo, il dit, que ceo fuit Nomen

direction q Toll

Le Case de Customes.

Nomen æquiuocum et ad 3. significations. 1. Usage d tēps dont memoꝝ ne court, est appel Consuetudo. 2. Antient rents et seruiçes, sont appel consuetudines. 3. Auxy les customs payable pur merchandises sont appel consuetudines. Et ceo appiert in Magna Charta, ca. 30. Omnes mercatores, nisi publicè antea prohibiti fuerint, habeant saluum & securum conductum, exire de Anglia, & venire in Angliam, & morari & ire per Angliam, tam per terram, quam per aquam, ad emendū, & vendendum, sine omnibus malis Tolnetis, per rectas & antiquas consuetudines. Per quel parol consuetudines, il dīt que les antient customs payable p̄ exportation de merchandises sont signifie. En mesme le sens (dīt il) cest parol est vse en Bract. lib. 2. ca. 24. Si cui concedatur talis libertas, quod quicquid sit de Theoloneo & consuetudinibus dandis per totū regnum Angliæ in terra & mari, & quod Tolnetum & consuetudines capiat, infra libertatem suam, de vendentibus & ementibus, statim erat quasi in possessione, & possessionē retinebit, cum Tolnetum & consuetudines receperit.

Il monstre auxy les copies de certain accompts, contein en les antient Pipe-Rolls en Engleterre, viz. vn de 15. Henr. 2. en ceux parols, Geruafius Draper-Viccomes Northfolk & Suffolk reddit compotum de 45 l. 16 s. 6 d. de consuetudine nauium de Oreford: & in magno Rotulo 5. R. 1. cētry est troue. Albericus de Billingesgate debet 72 s. 4. d. de consuetudine de Billingesgate & Buttolphesgate, si que il conclude, que en antient temps, quant Henric. 2. fessoit cest graunt, le parol consuetudo signifioit la dutie del custome payable pur merchandises. Vncoze il agree que a cest tour tel special duties de prerogatiue, come customs sont, ne poent passer per tel generall paroll de consuetudines. Mes auncient Grants ont tousz foiz vn fauorable interpretation, selonque le vsage & allowance. Et sur cest ground il mise plusoꝝ liuers, 14. H. 6. 12. 2. Del grant fait p̄ H. 2. 34. Ass. p. 14. del grant d̄ Wil. le Conqueror, 37. Ass. p. 6. 40. Ass. p. 21. 5. Ed. 4. 121. 10. H. 7. 13. b.

Mes fuit resoluë per le Seignior chiefe Baron. et les autres Referres, que le dīt Grant, que ils serront quieti de omni consuetudine, ne discharge eux de le graund Custome. Et p̄ncipalment, pur mesme le reason, que ad estre vse del autre part, viz. pur ceo, que consuetudo est nomen æquiuocum

equiuocum, & signifie plusors kinds de customes. Et issint esteant generall paroll, ne vnques passera cest special roial dury. Come ou le roy grant omnes piscarias, & piscationes, roial fishings ne passent : Roy grant tous Dines, roial mines de oz & argent ne passent : Roy grant tous Amercementz, roial Amercementz ne passent, 3. Ed. 3. l. 12. 445. presentment fuit fait vers Abbe, que il ad suffer vn point deschuer que il & ses predecessors seignioz del ville, ont bte de repaier de temps dont memozy ne court, &c. Le Abbe plead charter del H. 3. destre quit de reparation de tous pontz, mures, & causeyes, & que cest charter ad estre alloto en Quo warranto, &c. Uncoze cest plea ne fuit alloto. Car ceo fuit special charge ou dury p reason de son seignioz, que nest discharge p cest general clause. Car ou sont poiz en grant le roy, que desouth vn generall noime, comprehend choses roiall, & choses base, serra prise en fauour del roy, & les base choses passeront, & les roiall demurreront en le cozone, Plow. Com. 333.

Et le seignioz chiefe Baron misoit vn notable case a cest purpose, adiudge en leschequer de Engleterre, que fuit tiel. Le roy ad grant al vn Venetian marchand, que il serroit quit De omnibus Custumis Subsidijs, & impositionib⁹ & omnibus alijs denariorum summis debitis & solubilibus pro quibuscunque merchandis importandis, &c. & qⁱ il serroit cy free come les citizens de London. Per colour de cest charter, il claime destre free de Prisage, pur ceo que per special charter les citizens de London sont free de Prisage. Uncoze fuit adiudge que cest Grant del Roy ne discharge luy de Prisage, pur ceo que Prisage nest specialmt expresse en mesme le grant. Et sur mesme le reason fuit oze resolu p le dit chiefe Baron, & les auters Referres, sur le charter de Drogheda, per que les Burgesles de cest ville sont discharge de Theoloneo, Passagio, Pannagio, Lastagio, &c. que per force de cest parol Lastagio, ils ne serront discharge de Graund Custome de 13. s. 4. d. payable pur chestun Last de Hydes pur ceo que il y ad vn Last de Herrings, et Last de Powder, & de plusors auters choses cybien que de Hydes.

Et ad arraignmt fuit resolu per le dit chiefe Baron & les auters; que vn subiect ne poet prescribe destre free & discharge

*Plow. Of Customs in Hargr.
Law Tr. pa: 125.*

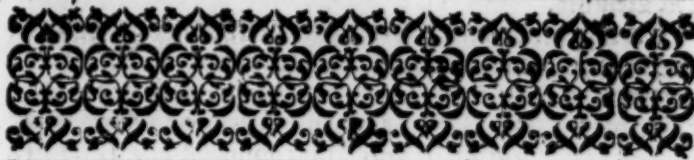
Le Case de Customes.

discharge de le auntient custome payable pur marchandises, ou de receiuer ceo a son ble demesne, pur ceo que ceo est vn certain reuenue del corone, mes en auters choses que sont casual, come waif, Stray, wreck, vn subiect poet prescriber.

Et apres ceo, viz. 16. Decembris 6. Iacobi, le de chiefe Baron & les auters Referres returnont al Seigniors del priuy counsell en Engleterre vn Certificat de lour opinion & resolution, ou, & en quel maner, les dits auntient Customes & le Subsidie de Poundage doent estre pay et respond al Roy, en les seuerall portz totones del Ireland. A quel Certificate, les Agents pur les dits portz totones submittent eux mesmes, deuant les dits seigniors del counsell, et agreeont, que dehoysenauant, les dits Customes et Poundage seront pay accordant. Et sur ceo, cest Certificate fuit trasmit en cest Realme, et enroll en le Eschequeriey. et accordant a ceo, de puis cest temps, les dits Customes et Poundage ont estre respond, et pay al Roy, en tous les portz dl Ireland.

Trinit

hitherto after that, that by law no person is obliged to take in payment other than money of gold & silver, goes
 say, that there is not any example to the contrary, except this case; & after having stated it, he adds
 this proceed is rejected by all of best lawyers as contrary to law; & giving council in Ireland
 no such legal power. And besides, it is to be considered, y^t if queen was then under
 difficulties by a rebellion in that kingdom assisted from Spain; & whatever is done in
 such exigencies & dangerous times, sh^d never be an example to pro-¹⁸ceed by, in seasons of
 peace & quietness. *Daquais letters. Lett. 1.st Works. vol. 10. p. 32.*



Trin 2. Iacobi.

Le Case de Mixt Moneyes.



A Roigne Elizabeth, pur paier les gages
 del Army Royall que fuit maintaine en
 cest Realme pur plusors ans, a suppres-
 ser le rebellion de Tyrone, caust un
 graund quantite de Mixt moneyes, oue
 le vsuail flampe del Arms de Corone, &
 inscription de la royale stile, destre come
 in le Tower de London. & transmittre ceux monies en cest
 Realme oue Proclamation portant dat 24. Maij, an 43. de
 la Reigne: per q^e la Maiestie declare et establi ceux Mixt
 moneyes, immediatement apres le dit Proclamation fait,
 destre le i oyall & currant money de cest realme de Ireland, &
 expressement command que ceux monies front issint ble, ac-
 cept & repete, per tous les subiects, et aus, blant aucun
 traffique ou commerce deins cest realm: & que si aucun pson
 ou pson refusent de recevoir ceux Mixt monies, selonque
 le Denomination ou valuation d^e ceux, viz. shillings p^r shillings,
 & les pieces de vi. s. p^r vi. s. & sic de ceteris, esteant tend p^r
 paient des aucuns wages, fees, stipends, ou debtes, &c. Ils
 front punis come contemners de la royale prerogative &
 commandement. Et al entent q^e ceux Mixt monies auotent
 le meisme cours et passage, fuit ouster declare p^r mesme le
 Proclamation, que apres l^e 10. iour de lune prochein ensu-
 vant tous aus monies q^{ux} ont est currant deins c^e realm,
 deuant le dit proclamation, front decy & adnull, & esteeme
 come

Le Case de Mixt moneys.

come Bullion, et nemy come loyall & curreant Money deins cest Realme.

En Apzill, deuant que cest Proclamation fuyt publiſh, quant le pure coine D'engleterre fuyt curreant deins cest Realme, vn Brett de Drogheda marchand, aiant achate certaine wares d vn Gilbert en London deuient oblige al dit Gilbert en obligation de 200. l. ſur condition que ſi payera al dit Gilbert ſes executoz, ou assignes, 100. l. ſterling, curreant & Loyall money D'engleterre, a le Tombe del Earle Strongbow in Chriſt church, Dublin, al certaine iour auener: quel iour happeoit deſtre apres le dit proclamation, et eſtabliſhment del Standard de Mixt monies deins cest realm: p que, al dit iour et Lieu, Brett fiſt Tender del 100. l. en les Mixt monies del nouel Standard, en pformance del condition del obligation auantdit. Et ſi cest Tender fuyt ſufficient d ſauer le forfeiture del dit Obligation, & ſi le dit Brett oze ſur le change ou alteration des Monies deins cest Realme, ſerra compell payer le dit 100. l. en auter ou melieur coine, que en les Mixt monies, ſolongue le rate & valuation d euz al temps del Tender, fuyt le queſtion al Councell table, ou le dit Gilbert eſteant Merchant de London ad exhibit petition vers le dit Brett pur le ſpeedie recouerie de ſon debt auantdit.

Et pur ceo que cest fuyt le generall Case del Realme, et fuyt auxy de grand importance en conſideration et reaſon d State, Sir George Cary eſteant donqs Deputie et auxy Treasourer del Roy, requiroit les chiefe Judges eſteuant del Dyne Councell de conferer & conſiderer de cest caſe, & de retourner a luy leur reſolution touchant ceo. Queux ſur conference et conſideration en ſur tous points del dit proclamation, fueront reſolue, que le Tender del dit 100. l. en les Mixt monies, al iour, et lieu auantdit, fuyt bon et ſufficient en la Ley de ſauer le forfeiture del dit obligatiō. Et que Brett ne ſerra enſoyce al aucun temps apres d payer auter Money en diſcharge de cest debt, forſque cest Mixt monie ſolongue le rate & valuation que ceo auoit al temps de Tender. Et cest reſolution fuyt certifie p euz a le Seignior Deputie, et le certificate enter en le councell Booke. Et en cest caſe diuers points fueront conſider, et reſolue.

Primement fuit consider, q en chescun commonwealthe il besoigne d'auer un certain Standard de moneyes.

Car nul commonwealthe poet estre sans contracts, et nul contracts sans equalite, et nul equalite en contracts sans mony. Car comist q en les primer societies del mound, Permutation del un chose p autre fuit ble, yncoze bñ tost ceo fuit troue cumbersome, & le transportation et diuision des choses fuit troue difficult & impossible : & p ceo money fuit inuent, cibien p facilitie de commerce, q p reducere contracts a equalitie. Cum non facile concurrebat, vt cum tu haberes quod ego desiderarem, ego inuicem haberem, quod tu accipere velles: electa materia est, cuius publica & perpetua estimatio difficultatibus permutationu subueniret. Paulus libr. 1. ff. de Contrahendis Empr. Et p ceo mony est dit Per Bodin, mensura publica, & Budelius li. 1. de re Numaria ca. 3. Dit, Moneta est iustum medium & mensura rerum commutabilium : nam p medium monetæ sit omnium rerum, quæ in mundo sunt, conueniēs & iusta æstimatio. Et a cest entent Keble dit, 12. H. 7. fol. 23. b. q chescun chose poet estre value p Argent, p q il parol Argent il entend mony coined. Et le graund utilitie del un certain Standard des monies et des measures, est bien monstre p Budelius en cest vers.

Vna Fides, Pondus, Mensura, Moneta sit vna,
Et status illæsus totius Orbis erit.

Secundment fuit resoluë, que appartient solement al Roy d'engleterre, de faire ou coynner money deins les dominions, issint que nul autre person poet ceo faire, sans speciall Licence ou commandement del Roy. Et si aucun presume de faire ceo de son Teste demesne, ceo est Treason enuers le person del Roy p le common Ley. Et ceo appiert per le statute de 25. Edw. 3. cap. 2. que est forsq declaration del common Ley, & p Glanuil, Britton, & Bracton deuant cest Statute, Stamford. fol. 2. & 3. & en le case de Mines, Plow. Comment. fol. 316. a. cest point est expresse plus cleerement, ou est dit, que le Roy auera les Mines d'Or & Argent : car si le subiect aueroit, il per la Ley, ne poet coignuer tielx Mettalles, ne metter print, ne value sur eux,

Le Case de Mixt moneyes.

eur; car appartient al Roy solement de metter value al roine, & faire le pze del quantitie, & de metter pzent a ceo: le quel estreant fait, le coine est curreant, & si subiect ceo fait, ceo est grand Treason al common ley, come appiert, 23. Aff. p. 2. Et est grand Treason al Roy, p ceo que il ad sole power de faire money, &c.

Et cest liure 3. choses sont expresse, queux sont requisite al fesans de loyall mony, viz. Authority del Prince, & pzent & le value. Mes sur le consideration del case en question, fuit note et obserue, que 6. choses ou circonstances doent concurre, p faire Loyall & curreant money, 1. weight, 2. fineness, 3. impression, 4. Denomination, 5. Authoritie del Prince, 6. Proclamation. Car chescun piece de money doet auer vn certaine proportion de weight ou poize, et vn certain proportion de puritie ou fineness, que est appel Alloy. Auz chescun piece doet auer vn certaine forme del Impression que serra cognoscibilis & discernibilis car sicome cere nest Seale, sans pzent, issint mettall nest money sans impression, Et Moneta dicitur a monendo, quia impressione nos moneat cuius sit moneta. Cuius imago & superscriptio est hæc? Cesaris: date Casari que sunt Cesaris. Auz chescun piece de mony couient auer denomination ou valuation p quant ceo serra accept ou pay, come per vn penny, vn groat, ou vn shilling. Et tout ceo couient estre fait per authoritie & commaundment del Prince, car autrement le money nest Loiall, & doet estre publish p proclamation del Prince, car deuant ceo, le money nest curreant.

Ceux circonstances apearon en les auncient Ordynances fait per le Roy, pur le Coinage de moneyes, cibien en cest Realme, que en Engleterre, queux sont destre troue en le Tower d London la, & en le castle d Dublin sey. Auz les Indentures enter le Roy & les Maistres del Mint, scribesont l proportion de poize, finenes, & alloy, l impression ou inscription, le noime & le value, vid. Stat. 2. H. 6. ca. 12. ou mention est fait de ceux Indentures, vid. auz Wades case en le 5. part des Reports d le Seignior Coke, i 14. b. q le roy p son proclamation poet fair ascun Coigne Loiall mony de Engleterre: a fortiori, il poet, per son proclamation tantum establis le Standard des monies coined per son authority deins les propr dominions.

Et

Et que le roy p son prerogative poet auxy mettre prize ou valuation sur tous coines, appiert per un notable case, 21. Edw. 3. fol. 60. b. En temps del William le Conquerer, le Abbe de Saint Edmunds Bury complainoit al roy en plia- ment, que ou il fuit exempt del iurisdiction del Ordinarie per diuers auintient charters, que le euesque de Norwich ad visé son meason encounter ceux charters d exemption. Per que fuit grant et ordaine in Parliament, que si de cel temps en auant, le euesq de Norwich ou ascun de ses suc- cessors alassent encounter le exemption auantdit, que ils payeront al roy, ou a ses heires, 30. Talentes ou Besautes. Apres ceo, viz. en temps Ed. 3. Le euesque de Norwich bi- sit la meason arrere, encounter le ordonnance auantdit, & cest contemp estreant troue en Banke le roy, Scire facias issit vers Leuesque a monstrierer p que il ne payeroit al roy les 30. Talentes ou Besautes. Et sur insufficent plea plead per Leuesque, le court agard que le roy recouera les Talentes ou Besautes, et que la prise soit interpret p le roy mesme, de quel prise ils seront puls ou meins. Per que est manifest que ou Talentes ou Besautes ou autres tiels pieces ou qua- tities d Or ou Argent, sont de incertaine value (car Bu- deus dit, quod Talenta sunt varia, & pondera sunt, potius quā numismata) le roy mesme ad power de mettre certaine value sur eux: Solonque le rule bien conus al ciuilians Moneta- estimationem dar, qui cudendi potestatem habet. Et en cest point la common ley Dengleterre agree bien que les rules del civil ley, ius cudendæ Monetæ ad solū Principem, hoc est, Imperatorem de iure pertinet. Monetandi Ius Principum of- sibus inhæret. Ius monetæ comprehenditur in Regalibus, que nunquam à Regio sceptro abdicantur.

Uncoze per antient charters, cest priuilege ou preroga- tive ad estre communicate al ascuns subiects en Engleter- re: come al Archeuesque de Canterbury per charter del roy Athelstane. Lambert peramb. Kanc. fol. 291. Et Lar- cheuesq de Poike, & euesque de Durham auoient mintes, & power de coigner monies, come appiert p le Statute de 14. H. 8. cap. 12. et le Deane de Saint Martins le Graund ad mesme le priuiledge, come est manifest per le Statute de 17. Edw. 4. cap. 1. Et cest ius cudendæ monetæ ad estre grant al plusors graunds personages en fraunce, en temps pa- rauant

Le Case de Mixt moneyes.

rauant, come Choppinus recite lib. de Domanio Franc. fol. 217.2. Et cē prerogatiue a cest iour, estingt trope generalment al tous inferior pñces et states de Germany, per grant ou permission del Emperoz. Car cest vn ley del Empire, Ius cudendz monetaz, nisi cui ab Imperatore concessum fuerit, nemo vsurpato.

Tercement fuit resoluē, que sicome le roy p son prerogatiue poet faire monies de q̄l matter & forme luy plerra, & de establir le standart de ceo, issint poet il changer son money en substance, & impression, & enhauncer, ou abaser le balue de ceo, ou tout ousterifit decrer & adnuller ceo, issint que soit forsque Bullion, a son pleasure. Et nota que Bullion, que dicitur latine, Billio, est moneta defensa & prohibita, quaz videlicet, vsu caret.

Et que le Roy ad vse cest prerogatiue en Engleterre, appiert per plusors notozious chaunges del Money, fait en temps del seuerall Royes depuis le Rozman conquest An. 36. Hen. 2. Moneta veteri reprobata, noua successit. Matth. Paris. hist. mag. fol. 35.2. Anno 7. Iohannis nouel money fuit coigne, a quel temps le pzimer sterling money fuit fait solongue le opinion de Camden, ou il parle de sterling castle en Scotland fol. 700.b. An. 32. Hen. 3. le roy fuit enfozce de faire nouel Money, cum moneta Angliz circumcidebatur a circumcisis Iudæis, come Matth. Paris dit, fol. 703.2. An. 7. Ed. 1. le standart del Monies fuit reneuo, quant le sterling penny fuit establiss de contenir vicefimam partem vncz, come appiert en veteri magna Charta, en le ordynance appell Compositio mensurarum, ou est ordene, quod viginū denarij faciant vnciam Anno. 29. Edw. 1. quaut les moneyes appell Pollardes fuerōt decrē, nouel sterling mony fuit auxy coine, vide 6. Ed. 6. Dier 82.b. & lib. Rubro Scaccarij Dublin, part 2. fol. 1. b. Apres ceo nouel monies ont estre fait, 9. Ed. 3. & 13. H. 4. & 5. Ed. 4. & 19. H. 7. & 36. Hen 8. Et derraignement 2. Elizabeth, quant tous mixt et base Monies fueront decrē, & le standard de pure siluer establiss, que continue a cē iour, de que Bodin fait honozable mention lib. 6. de Republica cap. 3.

Et semble, ceuz changer de Monies en Angleterre furent fait per le authorite del roy sans Parliamen, comēt que

Le Case de Mixt moneyes.

21

que plusors acts de Parliament ont estre fait, p^r ordering del eschange, & a p^rohibiter le exportation des Monies fa-
ics & ordaines p^r le roy, & le importation & utterance de fo-
reine & faux monies, sur certaine paines & penalties, dont
ascuns fueront capitall, & ascuns pecuniary. Et plusors
ordinances del roy fait sans Parliament, sont appell sta-
tutes, come Statutum de moneta magnum, & statutum de mo-
neta paruum, q^u sont issint nomine statutes, p^r ceo, que le ordi-
nance del roy oue proclamation en tiel case, ad le force del
act de Parliament.

Et sicome le Roy ad vse de Chaunger le standard de ses
monies, ceste scauoir le forme & le substance, issint ad il vse
per s^{on} p^rerogative de enchanser ou abaser le valuation de
ceo, nient obstant que le forme, & substance continue come
il fuit deuant. Et ceo fuit fait, 5. Ed. 4. come appiert p^r le
litter de 9. Ed. 4. fol. 49. 1. ou Danby dit, que vn noble est me-
lioz ore, que il fuit Anno 20. De cest roy, 20. b. en chescun no-
ble : & le roy 18. p^r special commission Dat. 24. Julij, anⁿ 18.
De son raigne, autho^rise le Cardinall Wolsey oue le aduise
des auters del Counsell del Roy, de matter valuation sur
touts monies de Engleterre, de temps en temps, selonque
les rates & values del monies de forein nations, q^uur fue-
ront adonques trop en, hances, specialment p^r le Emperoz, et
le roy de France, c^oe est expresse en le dit commission. Vide
aux 6. & 7. Ed. 6. Dier 82. & 83. diuers cases sur imbase-
ment des Monies.

Et est destre noate que ent le an, 36. H. 8. quant plusors
so^rts de base monies fuer^ot coigne en Engleterre, & 2. Eliz.
quant le pure standard des silver monies fuit establis^h, il y
ad 3. notozious falles ou decies de base monies publish p^r
proclamation : le p^rimer, 9. Julij 5. Ed. 6. le second 17. Au-
gusti eodem anno, come est expresse en Dier 83. a. le tierce, 28.
September. 2. Eliz.

Et sicome le Roy ad tous foies vse de faire & chaunger
les monies de Engleterre, il ad auxy vse mesme le p^rero-
gative en Ireland tous temps depuis le 12. an del Roy
Iohn, quant le p^rimer standard des English monies fuit esta-
blis^h en cest Realme : come est record Per Marth. Parif. mag-
na hist. fol. 220. b. ou il dit, que cest Roy estant in Ireland

Le Case de Mixt moneyes.

constituit ibidē leges & cōsuetudines Anglicanas, ponens ibidē Vicecomites, aliosque ministros, qui populū regni illius iuxta leges Anglicanas iudicarent. Præfecit autem ibidem Iohanñ de Gray Episcopū Norwicensē Iustitiarium, qui denarium terræ illius ad pondus numismatis Angliæ fecerat publicari, & tam obulū quā quadrantem rotundū fieri præcepit: iussit quoque Rex, ut illius monetæ vsus tā in Anglia quam in Hibernia communis ab omnibus haberetur, & vtriusque regni denarius in thesauris suis indifferenter poneretur.

Per que appiert, que le Standard de monies en Engleterre & en Ireland fuit equall al p̄imes, & que le English money ne fuit vn quart part melior in value que le Irish, come ceo ad estre depuis le temps del Edw. 4. Car deuant, sicome fuit vn mesme Standard de moneyes en ambideux Realmes, issint tous foits quant le money fuit chaunge en Engleterre, fuit auxy change in Ireland cōe en le an 1279. viz. 7. Edw. 1. quant t̄dw. 1. establiß nouel mony en Engleterre, come deuant est monstre, fuit auxy mutation des moneyes en Ireland, come est noate en les Annals de cest Realme, publiß per Camden en son liuer de Britannia, ou est dit, que Anno 1279. Dominus Robertus de Vifford iustitarius Hyberniz intrauit Angliā, & constituit loco fratrem Robert de Fulbourne Episcopum Waterford, cuius tempore murata est moneta. Issint 29. Edw. 1. quant per speciall ordonnance del Roy les Pollards & Crockards fueß decrēe & adnull, mesme le ordonnance fuit transmitt en cest Realme, & enroll en le escherquer icy, come est troue in libro Rubro Scaccarij hic part. 2. fol. 2. b. auxy en les Annals abantdit. est note en mesme le an, Numisma Pollardarum prohibetur in Anglia & Hyberniz.

Et sicome le Standard des monys fuit equall. issint les mints & coïnage en cest realme fuit order & gouverne en mesme le manner come en Engleterre, come appiert p̄ le accompt del Donat & Andrew de Sperdsholt maistres del eschange al Dublin, 9. & 10. E. 1. in Archiuis Castri Dublin, & in libro Rubro Scaccarij hic part. 2. fol. 1. & en Rot. Parliament. in Castro Dublin, 12. Edw. 4. cap. 60. vide auxy plusors ordonances la touchant le mint & moneyes, 7. E. 4. c. 9. 10. Ed. 4. c. 4. 16. E. 4. c. 2. 19. E. 4. c. 1. 1. R. 3. c. 7.

Des

Le Case de Mixt monies.

22

Après le premier difference et inégalité entre les Standardes del english Monie, et Irish Monies, est troué en 5. Edw. 4. Car donques fut déclaré en Parliament icy, que le Noble fait en temps Edw. 4. Hen. 4. Hen. 5. & H. 6. serroit de cest temps en auant courrant en cest Realme, pur 1.5. & issint le demy Noble, & tous auters coïnes selonqz mesme le rate vide Rot. Parliament, 5. Edw. 4. cap. 40. & 11. Edw. 4. cap. 6. & 15. Edw. 4. cap. 5. in le office del Rolles in Castro Dublin, Apres quel temps, le Money fait in Irelād, ou p̄ Ireland, fuit tous foits meinder in valuation que le Money de engleterre, & le vsuall propoztion del difference fuit le quart part tantum, viz. le Irish shilling fuit forsque 9. d. del engleterre vide le Proclamation auantdit, dar. 24. Maij 43. Eliz. enrol en le Chauncery icy, ou la Roigne fait mention de cest difference fait per ses progenitoz entre le Standard des moneyes fait pur cest Realme, & les monies D'engleterre. Et nota que ceo que est appell Standard del money en cest case, est mesme ceo que est appell p̄ le french Pied de money, p̄ Bodin, Pes monetarum, quasi Princeps ibi pedem figat aiant fix & establiss le pois & purite Del Money en vn certaine propoztion, que ne serra transgresse per les Moniers.

Et issint est manifest, que les Royes de engleterre ont toutfoits eto & exercise cest prerogative d̄ coïner, & changer le forme, & quant ils trouant expedient, de enhanser & abaser le value de monies, deins leur dominions. Et cest prerogative est alloz & approue non solement p̄ le cōmon ley, mes auxy p̄ les rules del Imperiall Ley. Budelius de re numaria libr. 1. cap. 5. Princeps ad arbitrium suū, irrequisito assensu subditorum, valorem monetæ constituere potest, quia populus, quantū ad hoc, omnem potestatem & iurisdictionem in Principem seu Imperatorem transtulisse dicitur. Et paula post en mesme le charter, coment que ascuns, DD. sont de opinion, Principem sine assensu populi monetam mutare non posse, **vncoze il conclude.** Si Princeps consueuisset mutare monetā auctoritate propria, sine consensu populi, a tēpore, cuius initij memoria non existit, tunc libere imposterū cum hoc facere posse. L. hoc iure paragf ductus aquæ. ff. de aqua quotidian. & c. Et Couarruias libr de collatione veterū numismatū, cap. de mutatione

Le Case de Mixt monies.

ratione monetæ dît, Princeps potest mutare monetam ratione publicæ vtilitatis, viz. tempore belli, vel si alias vtile populo sit futurum, ita etiam, vt ex Corio fieri possit. Et p̄ ceo est note per Molineum libro de mutatione Monetæ cap. 100. que le state de Rome in le p̄mier Punik guerre, quant Anniball ad possesse grand part de Italy, & tout lour tresoure fuit exhaust, enhançoit base monies al grand values, pur payement de lour Armies, & vncore le Justice de cest state fuit donques famous per tout le mound. Mes nihil est magis iustum quam quod necessarium, per que appiert, que les mixt monies fueront fait per la roigne Elizab. Sur iust & honorable cause.

Fait resoluë, que le dît Mixt money aiant le impressiõ & le inscription de la roigne de Engleterre, & esteant p̄o-claime pur loyall et currant money deins cest realme de Ireland, doet estre prise & accept p̄ Sterling money : & sur consideration d̄ c̄ point, le nosme & le nature de sterling mony fuit enquire & discouer. Pur le nosme de sterling, aucuns Doctozs de la Ley ciuile esteant deceue p̄ le erronius report del Polidor, Virgil, ont conceue, que cest English money fuit appel sterling, p̄ ceo que le forme dun stare, dõt le deminutiue ē sterling fuit imprint ou stamp sur i. Et p̄ Couarruias lib. de Collatione veterum numismatum c. 2. Sterling (dît il) est argenteus nummus Anglicus ex vicefima sexta parte vncie, nam viginti sex nummi argenti sterlingi, pendebant vnciam, Autore Polidoro Virgilio in historia Anglica, lib. 16. Dictus autē est hic nummus, vt idem author tradit, sterling, quod Sturnus avis, Anglicè, sterling, in altera parte nummi esset impressa. A mesme le entent Choppinus de domanio Franc. lib. 2. tit. 7. ad cest noate. Cæterum Errico 3. Britannie Rege, primū percussa est nunc vsitatissima sterlingorū moneta, ab effigie sturni sic dicta, anno 1249. Ceur DD. esteant aliens, fueront come semble, misinforme p̄ Polidor Virg. II. que fuit auxy vn Alien, & hospes in nostra Respublica : mes nostre Linwood auxy (que fesoit son glosse sur Es Provincial constitutiõs de Engleterre, en temps H. 6.) titul de Testamentis C. item quia, verbo, Centum solidos, dît, que sterlingorū nomē erat argenteæ monetæ, & habebat similitudinem

Le Case de Mixt monies.

23

nem denarij vsualis, hoc saluo, quod in vna quarta habebat effigiem auis, quæ vocatur Sturnus, Anglices sterling.

Autres ont estre de opinion, que cest english money a-
boit le nomme de sterling, pur ceo que le primer money de
cest Standard fuit coigne in le castle de sterling in Scot-
land per le Roy Edw. 1. Des ceo est auxy erroneous opi-
nion, come est noate per Camden in Scoria pag. 700. ou il
parlant del castle de sterling dit, Quod quidam monetâ pro-
bam Angliæ, quæ sterling money, dicitur, hinc denominatam
volunt, frustra sunt, a Germanis enim, quos Angli Esterlinges
ab Orientali situ vocarunt, facta est appellatio, quos Iohannes
Rex ad argentum in suam puritatem redigendum, primus euo-
cavit, & eiusmodi nummi, Esterlingi, in antiquis scripturis sem-
per reperiuntur.

Et cest derraigne opinion, sans doubt, est le meilleur et
plus probable, per le Judgment de tous les bien doc-
tes Antiquaries D'engleterre. Car en tous les aumtient
statutes, queux fefont mention de cest money, ceo cest ap-
pell Esterling. Come 9. Ed. 3. ca. 2. &c. Nul faux mony eoun-
terfeate Esterling ne soit emport en nostre Realme. Et eodem
Anno cap. 3. Nul Esterling maile, ne ferlinge, soit found
pur vessell, &c. Et 25. Edw. 3. cap. 13. que le money de Or &
Argent que ore court, ne soit pas empaire en pois ne en Alloy,
mes soit mise en lantient estate come en le esterling. Et Marth.
Paris. Magn. hystor. fol. 403. ou il expresse le forme del obli-
gation per le Clergie del Angleterre fait al Bankers del
Pape resident en London, fait mention de cest money per
nomen esterlingorum: noueritis nos recipisse ab A. & B. &c.
centum uncias bonorum & legalium esterlingorum, tresdecim
solidis & quatuor sterlingis pro qualibet uncia computatis et
en mesme le Autoz fol. 710. eodem tempore, dit il, Moneta
esterlingorum propter sui materiam desiderabilem, detestabili
circumcisione coepit deteriorari & corrumpi & fol. 575. Co-
mitissa de Biarde venit ad Regem cum 60. militibus, ducta cu-
pidine esterlingorum, quibus nouerat Regem Angliæ abunda-
re, & accepit a Rege qualibet die p stipendio tresdecim libras
esterlingorum, &c. Et Pouenden in Richard. 1. f. 377. b. fait
mention de cest money en ceuz parols, Videns igitur Gal-
fridus Eboracensis electus, quod nisi mediante pecunia amor &
regis fratris sui nullatenus habere possit, promisit ei tria milia li-
brarum

Le Cale de Mixt monies.

brarum sterlingorum pro amore eius habendo : & ceo fuit de-
 nant le temps del roy Iohn, p que semble, que le temps qnt
 cest money fuit pñmerment coigne est incertaine. Car al-
 cuns dient, que fuit fait p Osbriht vn roy de Saxon race
 160 ans deuant le Norman Conquest. Et issint, Sicut
 nummus dicitur à Numa q fuit le pñmer roy que fesoit mo-
 nies en Rome, issint sterling dicitur ab Esterlinges, qur pñ-
 mes fesoient le money de cest Standard en Engleterre, per
 Metonymiam, cum inuentorem pro re inuenta ponimus, vt
 Ceres pro frumento, Bacchus pro vino, &c.

Et est desre obserue, que les Esterlinges fueront les pñ-
 mer founders de les 4. pñcipall cities del Ireland, viz.
 Dublin, Waterford, Cork, & Limrick, & del auters mari-
 time villes en cest Realme, et fueront le sole maintanours
 de traffique et commerce, que fuit tout ousterint neglect p
 les Irish. Ceux cities et villes fueront desouth le protec-
 tion del roy Edgar, & Edw. le Confessor deuant le Norman
 conquest. Et ceux Esterlings en les antient records de cest
 realme sont appell Ostmanni. Et p ceo, quant H. 2. sur le
 pñmer conquest, pensoit mieux de peopler ceux cities &
 villes oue English colonies deduce de Bristow, & Chester,
 &c. il assignoit al ceux Ostmen certaine propoztion de terre
 prochein adioynant al chescun des dits cities, quel port-
 on est appell en les Records de auintient temps, Cantreda
 Ostmannorum. Et tout ceo fuit obserue sur le nosme de
 Sterling.

Sur le nature ou substance de cest money, pñmerment
 fuit note, que le coigne que fuit properment appell le
 Sterling, fuit le denier ou penny de siluer, come appiert en le
 Ordinance appell Compositio mensurarum fait en temps
 Edw. 1. ou est dit, quod denarius Anglia, qui nominatur ster-
 lingus, rotundus, sine tonsura, ponderabit triginta & duo gra-
 na in medio spica, &c. Et chescun auter coigne ou piece de
 siluer fuit mesure per le sterling penny, come le groate co-
 tainoit le value de 4. sterlings, & le halfe groate le value de
 2. sterlings, 25. Edward. 3. cap. 6. et le shilling consistoit de
 12. sterlings, Linwood de testamentis C. Item quia, verb. Cē-
 tura solidos. Et le Mark consistoit de 13. solidis & quatuor
 sterlingis, come deuant est monstre, Matth. Paris. hist. magn.
 pag. 710. & le malle fuit noate p cest parol demi, viz. Demi-
 dia

dia pars sterlingi, & le farthing p qua, viz. quarta pars sterlingi. vid. **vn Ordinance sans date** in magna Charta impzime per **Totell** Anno. 1556. fol. 167. & en le **vieux abridgement de Rastall**, mony 52. Quia multorum Regum temporibus prouisum fuit, qd propter pauperes denarius argenti, viz. Sterlingus diuideretur in obulum & quadrantem, ex parte domini Regis precipitur, quod quicumque recusauerit obulum vel quadrantem debitam habentem formam, capiatur, &c. Vid. 6. & 7. Ed. 6. **Dier. en le case de Pollardes**, ou appiert que sterlingus & denarius sont tout vn, car la est dit quod duo Pollardi currebant pro vno sterlingo, & accordant duo sterlingi fueront pay pro vno denario. Et reuera en auncient temps, chescun soit de mony, fait de les seuerall mettallz dont mony fuit vsualmente coigne, fuit pproperment denarius: & pur ceo les **French & Italians** parlont pproperment, ou ils appellont tous monies deniers, & danari, car nummi fueront vel cuprei vel argentei, vel aurei: singuli argentei valebant decem cupreos, & sic denarij sont appellati, & singuli aurei valebant decem argenteos, & en cest respect ceuz fueront auxi denarij, & le auncient propoztion del Or al Argent fuit 10. al 1. Et cest propoztion (come semble) **Dauid** ad obserue en le treasure de Or & Argent que il ad prepare pur le erection del Temple: car le **Text** dit, Chron. cap. 22. vers. 14. que il ad prouide a cest purpose cent mill talents de Or, & dix cent mill talents de Argent. Ilint le primer & proper sterling coine fuit denarius.

Et pur le substance de cest denier ou sterling pennie in pondere & puritate. Quant al pois ceo fuit al primer viceffima pars vncie, viz. vn ounce fuit tallie en 20, **Sterling deniers**, & ment plus, vid. compositio mensurarum fait en temps **Edw. 1.** in veteri libri de Magna Charta fol. 113. b. Et en le **vieux Abridgement de Rastall**, Tit. **Weights & Measures**, 4. ou est dit, Quod viginti denarij faciant vnciam, & duodecim vncie faciunt libram. Et ilint le **Sterling** pense fuit le bint part del ounce tanque, 9. **Edw. 3.** a quel temps le ounce del siluer fuit tallie en 26. pence, Annales del **Rob. de Auesbury M.S.** vid. plusors ordinaunces touchant le nouel **Sterling money**, fait 9. **Edw. 3.** **Rastall**, **Mony**, 345. Et tel propoztion fuit continue tanque, 2. **Henr. 6.** quant le ounce del siluer fesoit, 32. pence, & ceo appiert per le statute de 2. **H. 6.** cap.

Le Case de Mixt moneyes.

6.cap. 13. Et auxy p Linwood de Testamentis cap. Item quia. verb. centum solidos, hic solidus (dit il) sumitur pro duodecim denarijs Anglicanis: horum viginti sex ponderabant vnciam, cum tamen iam 32 denarij vix faciant vnciam. Et cest glosse fuit escripte en commencement del raigne del Hen. 6. come il mesme expresse en le Preface a son liuer: cest standard fuit continue iusques al 5. Edw. 4. & donques le ounce del siluer fesoit 40. pence: 9. Edw. 4. 49. a. & 12. Ed. 4. cap. 60. in Rot. Parliament. Dublin, & ceo continuoit iusques al 36. Henr. 8. quant le Roy preparoit son journey al Bullogne, & donques vn ounce de siluer fuit diuide en 45. pēce, que ne fuit alter iusques al 2. Elizabeth, quant le ounce de pure siluer fuet tallie en 60. pence, et cest Standard remain a cest iour: & issint le sterling peny que fuit al p̄mies vice-sima pars vncie, est oze sexagesima pars vncie, et p consequence le antient sterling penny containoit tant de siluer, quant est contain en le piece d trois deniers q est curreant a cest iour.

Et quant al puritie de cest sterling money, 18. s. 5. d. ob. argenti purissimi continebatur in qualibet libra, & qualibet libra de sterling mony auoit 18. d. ob. & allay de copper, & nient plus, & de cest allay de sterling mony les ordnances ou statuts d 25. E. 3. ca. 13. & 2. H. 6. ca. 13. font mention. Mes ceo est bien conus al toutz Moniers, & est contene en toutz les Indentures fait enter le Roy, & les Maistres del Munte.

Donques, le sterling mony esteant de tiel pois, et de tiel finenes, le doute, prima facie, fuit, coment cest Mixt Money sera dit sterling. Et pur le cleering de cest doubt, fuit dit, que en chescun come vn piece de money est bonitas intrinseca, & bonitas extrinseca: Intrinseca consistit in praeiositate materia & pondere, viz. finenesse & weight: Extrinseca bonitas consistit in valuatione seu denominatione, & in forma seu charectere. Budelius de re Nummaria lib. 1. cap. 7. Et cest bonitas extrinseca que est auxy dit estimatio siue valor imposititiuus est formalis & essentialis bonitas monetæ et cest forme dat nomen & esse a le money, car sans tiel forme le plus p̄cieus & pure mettall que poet estre, nest pas money. Et pur ceo Molineus libro de mutatione Monetæ dit, non materia naturalis corporis monetæ, sed valor imposititiuus est for-

ma

ma & substantia moneta, quæ non est corpus Physicum sed artificiale come Aristotle dit Ethycorum lib. 5. Et auxi Politicorum primo, il dit a cest effect, que mony fuit primerment signe & imprint oue certeine charecter, al intent, que le people acceptera ceo, sur credit del Prince ou state que publish ceo, sans examination ou trial del Pois ou Purity. Et a cest entent Molineus ad cest rule Q. 99. De iure non refert, siue plus, siue minus argenti insit, modo publica, proba, & legitima moneta sit. Et Baldus l. singulari, dit, in pecunia potius attenditur vsus & cursus quam materia. Et Seneca lib. 3. de beneficijs, æs alienum habere dicitur, & qui aureos debet, & qui corium forma publica percussum. Et fuit dit q le Roy ad mesme le prerogative a doner valewe al base metall per son impression ou Charecter, come il ad a doner estimation al un meane person per imparting le Charecter del honoz a luy: Sic fiet viro quem Rex honorare desiderat.

Et issint fuit conclude, que apzès que les Esterlings p commaundement del Roy del Engleterre, ont fait cest pure Euglish money, que a nomine opificum fuyt appel Esterlinge, ou Sterling Money (le Standard de quel Money adestre tous foits le plus fix & immooveable Standard de Money en tout le Mounde, que ad estre grand honoz al nostre Nation, car en tous auns Realmes & States, les Standards de leur Monies sont plus unstable & variable) Cours Monies coigne p l'authorite del Roy d'engleterre, & aiant son characeer et impression non solemēt en Engleterre, mes auxi en Scotland & Ireland ont estre Sterling monies, & issint appell, repete, et accept p tous gentz, soit le matter d ceo mist ou pure. Et ceo appiert p l'Ordinance que est appell Statutum de moneta magnum, p quel tous monies sont prohibite forsque l monie del Engleterre, de Ireland, & de Escosse, que fuyt pperment le Sterling money. Et p ceo Freherus, libro de renummaria, vbi innumerat varias variarum gentium monetas: Sterlingi, inquit, habentur in Anglia, Scotia, & Hybernia. Et Bodin. lib. 6. de Republica, ca. 3. plant del mony d Scotland, en Escosse, dit il, sont deux liures fort differentes, l'un de Esterlinges, l'autre d'agere. Et certes le blial Scottish liuer est semble al french liuer, & le liure de Esterlinges entrant la, est celle d'engleterre. Et que base du Mixt money

Le Case de Mixt moneyes.

ney poit estre curreant p Sterling, appiert p le dit case de Pollards, Dyer 82.b. ou est dit, Quod curebat quædam moneta in Anglia loco sterlingi que vocabatur Pollardes, scz. duo Pollardi p vno sterlingo.

5 **F**uit resoluë que coment que cest mixt mony fuit fait destre curreant deins cest Realme de Ireland solement, vncoze ceo poet estre bien dit, curreant et loyall money D'engleterre, p 2. causes, 1. p ceo que cest Realme est forsqe member del Imperial Cozone D'engleterre, & ceo appiert, 3. Henric. 7. fol. 10. a. ou question fuit propound a les Justices p Hobart Atturney generall. Si quis sciens monetam ad similitudinem monetæ Regis Angliæ contrafactam, talem monetam in Angliam extra Hyberniam deferat, si sit proditio necne : & dixerunt quod Hybernia est quasi Membrum Angliæ, & ibidem legibus Angl vñtur, & autoritate Regia faciunt Moneram. Et a cest intent est recite en le Statute de faculties, enact en cest Realm, 28. Henr. 8. cap. 19. That this the Kings Land of Ireland is a Member appendant, and rightfully belonging to the Imperial Crowne of the Realme of England, and vnited vnto the same. Et en l'Act 33. H. 8. cap. 1. p que le stile & title del Roy de Ireland fuit done al Henr. 8. les heirs & successors, est ouïer enact que le Roy enioyera cest stile & title, et tous autres Royall preheminences, prerogatiues, & dignities, As vnited and annexed to the Imperiall Crowne of the realme of England.

2 **E**st appell Loyall Money D'engleterre, en respect del lieu de Coinage, que fuyt en Engleterre, viz. en l' Tower de London. Car coment que en antient temps l' Roy auoit plusors Mints en cest Realme, scome il auoit en Engleterre, vncoze depuis le commencement del raigne de la Roigne Elizabeth, tous les Mints ont estre redues al vn lieu, viz. al Tower de London. Et ceo fuit fait sur bone reason de state, p auoyder falsification des Monies. Et p ceo, deuaunt le Norman Conquest, tous monies furent coigne en Monasteries: car fuit presume que in tiels maisons nul falsitie ou corruption serroit troue : et ceo agree ou le prudence del Romaine state, que nauoit forsqe vn Mint pur tout Italy : Et ceo fuit en le Temple de

de Iuno al Rome, que pur cest cause fuit appell Iuno moneta: & a cest entent le Emperoz Charles-Basif fesoit vn ley en ceur parolz viz. De falsis monetis, quia in diuersis locis contra Iustitiā fiunt, volumus, vt in nullo alio loco moneta, nisi in Palatio nostro, fiat. Choppinus de Domanio Francie, fol. 217. a. vncoze en 28. Ed. 1. cest prudent Roy pur le facilitie de eschaunge, causast plusors Mints destre establiſh en seuerall villes de Engleterre: vn en le Tower de London oue 30. furnasse, auter al Canterbury oue 8. furnasses, auter al Kingstone super Hul oue 4. furnasses, auter al New-castle & Cline oue 2. furnasses, aut al Bristow oue 4. furnasses, & auter al Excester oue 2. furnasses. Tractat. de moneta Anglie fait en temps Edw. 1. que ieo troue en le Librarie de sir Robert Cotton, que fuit le liuer de sir Burleigh iadis Grand Treasurer d'engleterre, vide auxy les Close-rolls, 29. Ed. 1. in Turre London: & ceo appiert auxy p l'enscription de diuers antient coines, sur queux sont expresse les nosmes des cities ou fueront coined, accordant al versé fait en temps Ed. 1. & prise p Stow hoys de Robert le Brun vn antient M. S.

Edward did smite round penny, halfepenny, farthing.

& donques ensuiſt.

On the Kings side, was his head and his name written,
On the Crosse side the Citie where it was smitten.

Et mesme cest Roy ayant establiſh vn Mint al Dublin oue 4. furnasses, et ayant constitute Alexander Norman de Luik master des monies la, come appiert en plusors recozds in Archiuis Castri Dublini, apres, viz. 32. Ed. 1. quant il auoit alter le forme del coigne, il causast diuers stamps consistant de 2. parts, dont le vn contenoit le Pile, & le auter le Crosse, destre transmit al Treasurer de cest Realme, come est record in libro Rubro Scaccar hic, en cest maner Magister Gulielmus de Wimundham custos Cambiorum domini Regis in Ang^{re}, de praecepto venerabilis Patris Bathon. & Wellensis Episcopi, Thesaurarij eiusdē domini Regis, misit domino Gulielmo de Esfenden thesaurario in Hibernia, viginti quatuor pecias cuneorum, Pro moneta ibidem facienda, viz.

Le Case de Mixt monies.

tres pilas cum sex crucellis pro denarijs, tres pilas cum sex crucellis pro obolis, & duas pilas cum quatuor crucellis p ferlingis, per Iohannem le minor, Thomas Dowle, & Iohannem de Sherdich clericos de societate operariorum & monetariorum London, per eosdem ad monetam prædictam operandam & monetandam, & la é auy expresse entrey fait deuant queux tesmoignes les dits stamps fueront deliuer. Car Cuneus monetae tanquam sigillum regni custodiri debet, come est dit en le treatise de moneta Angliæ, fait en le temps Ed. 1. mention deuant : & le reason est, p ceo que de counterfeater luy & l'auter est hault treason.

Et a cest temps fuit forsqe vn Minte in Ireland, cest a scauoir al Dublin : mes longe temps apres, viz. 3. E. 4. vn Mint fuit establiß al Waterford, & auter al Trim, & auter al Gallway, Rot Parliament. 3. E. 4. in Caßro Dublin. Et 12. Ed. 4. Rot. Parliament. ibidem, est ordeine que les maistres de Minte en Ireland faieront en les Castles de Dublin, et Trim et en le ville de Drogheda, cinque sortes de coïnes, le Groate, le halfegroate, le penny, halfepenny, farthing, per que est manifest que en temps parauant, ount estre 5. seuerall Mintes in Ireland en les seuerall billes auant dit. Mes tous ceux fueront discontinue en temps Edw. 6. issint que depuis le raigne de cest Roy tous les monies faits pur Ireland, ont estre coigne en Engleterre, et pur ceo cest Mixt Money copned en le Tower de London poet estre dit properment currant & loyall mony D'engleterre.

DE craignement fuit resoluë, que coment que al temps del cõtract & obligatiõ fait en le case auant dit, pure money d'Or & Argent fuit currant deins cest realme, ou le lietoë de payment fuit assigne, vncoze le Mixt Money eskeuant establiß en cest Realme deuant le iour de payment, poet estre bien tender en discharge del dit obligatiõ, & le obligee est lie de accepter ceo : et sil ceo refuse, et targe tant que le money soit chaunge arriere, le obligoz nest tenu de payer auter money de mieulx substance, mes suffist sil soit tous temps pziß de payer les Mixt Moneyes selonque le rate, pur que ceux fueront currant al temps del tender. Et cest point fuit resoluë, sur consideration de

2. **Circumstances**, viz. le temps & le liue de payment. Car le temps est future, That if the sad Brett shall pay or cause to be paid one hundred pounds sterling currant money, &c. Et p ceo tiel money sera pay que sera currant a tiel future temps, issint que le temps del payment, & nemp le temps del contract sera respect.

Auxy le future temps est entend per les parols currant Money, car chose que est passe nest in cursu. Et pur ceo tout les Doctors queux escriant de re Nummaria agreeont en cest rule, Verba currentis moneræ tempus solutionis designant. Et a cest entent sont plusors cases ruled in nostre liuers 6. & 7. Edw. 6. Dier 81. b. Apres le fall & embasement des monies, 5. Ed. 6. Debt fuit port vers executoys de lessee pur ans, p rent arriere pur 2. ans finie al Mich. 2. Ed. 6. a quel temps le shilling, que al temps del action port, fuit decree al bj. d. fuit currant pur xij. d. en cest case les defendants pleadont Tender del rent al iours quât ceo fuit due, in pecijs moneræ Angliæ vocat. shillings & que chescun shilling al temps del Tender fuit solubilis p xij. d. Mes le plaintiffe ne nul auter pur luy fuet prist de recevoir ceo, &c. Et concludont, que ils sont vncoze prist de payer les arrièrages in dictis pecijs vocat. shillings secundâ raram, &c. Sur cest plea coment que le plaintiffe demurroit, vncoze il fuyt content de pprendre le Argent secundâ raram prædictâ, sans costs ou damages. A mesm le entent est le case de Pollardes adiudge, 29. Ed. 1. & Report p Dier 7. Ed. 6. fol. 82. b. ou en debt sur obligation pur paiement de 24. l. al 2. seueral iours, le defendant plead que al iours limit pur payment de debt en demaund, curriebat quædam moneta quæ vocabatur Pollardes loco sterlingi, &c. Et que le defendant al pmièr iour de payment ad Tender le moitié del debt en le money appell Pollardes, q le plaintiffe refuse, & q il est vncoze prist, &c. Et offer ceo in court, que nest deny per le plaintiffe, ideo concessum est que il recouer vn moitié en Pollardes & le auter in pure sterling money, vide 9. Edw. 4. 49. 2. Un notable case sur chaunge de Monies, ou est dit que si home en action de debt demaund, 40. l. sera entend money que curge al temps de brieve purchase. Et la vn case de temps, Ed. 1. est mise, que est direct a cest purpose. En debt port sur fait,

Le Case de Mixt moneys.

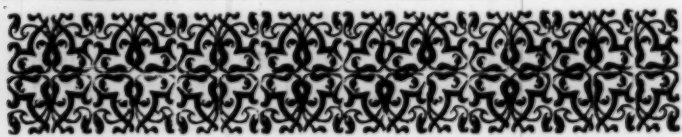
De 30. quarters de orge, price, 20. l. fuit troue pur le plain-
tife, & le Jury fuit charge de enquire del price al temps d'l,
payment, & fuit dit, que al temps del payment vn quarter
fuit al 32. s. Mes al temps de fefang de fait fuit forsqe al
3. s. & le plaintife recouer 18. l. pur le blee, accordant al
price que fuit al temps del payment. Aury a cest entent
L'intoode ad vn notable glosse sur le constitution de Simon
Mephram libr. 3. de Testamentis, cap. Item quia. Car, ou le
constitution est tiel, Pro publicatione testamenti pauperis, cu-
ius inuentarium bonorum non excedit centum solidos ster-
lingorum, nihil penitus exigatur, il fait cest glosse: hic soli-
dus sumitur pro duodecim denarijs Anglicanis, &c. Sed
quaro, inquit, ille, nunquid circa hos centū solidos debeat con-
siderari valor in moneta iam currente, vel valor sterlingorū qui
currebant tempore statuti & la il resoluē, quod vbi dispositio
furgit ex statuto, vt hic, licet moneta sit diminuta in valore, ta-
men debet considerari respectu monetæ noue currentis, & non
respectu antiquæ. Nam mutata moneta, mutari videt' statutū,
vt scilicet intellegatur de noua, & non de veteri, vide Registrū
fol. 50. a. & 54. b. ou le roy maunde sō bziese destre certifie
del value del esglise, les parolx del bziese sont Secundum
taxationem decimæ iam currentis. Et 31. Ed. 3. Fitz Annui-
tie 28. Annuitie fuit grant al I. S. tantque il fuit promote
per le grantor al sufficient benefice I. S. port bziese de an-
nuity vers le grantor, que plead que il ad Tender al plain-
tife sufficient benefice, & la issue est prise sur le value del be-
nifice al temps del Tender.

Mes fuit dit, que coment que en contracts ceux parolx
currentis monetæ, seront referre al temps del payment,
vncor en darrein voluntz seront referre ad temps conditi
Testamenti, car le bequeast est en le present temps, Item
Igiue and bequeath, &c. Et pur ceo legacies seront pay
en tiel money que fuit currant al temps del fefang del
Testament, ou solonque le rate de ceo. Fuit aury dit,
que si hom ad 1000. l. pure siluer en Marriage oue la fem-
me, & apres ils soient diuorced causa præcontractus, per que
la feme receuera la portion, ou si home recouer p errone-
ous Judgement 100. l. en debt, & ad execution en pure
siluer money, & apres le Judgement est reuers, issint que
il

il serra restozre a tout ceo que il ad perd, comēt que base money soit estable en le meane temps, restitution serra en tiel money que fuit curreant ad temps del Marriage, & al tēps del recouerie. Mes ceur derraine cases ne fueront resolue.

Et p̄ le circumstance de lieu, fuit resolue, que comēt que le contract fuit fait en London, vñc le lieu de paiement esteant appoint in Dublin, il couient de necessitie que le obligor ferroit son tender en le Mixt money al temps de paiement. Car tout auter money fuit & decree fait bullion per le proclamation auant dit, & cest money solement establiſh: issint que si le obligee ad refuse cest Mixt money, il ad comēt contempt par que il serroit puniſh. Aux p̄les Judges de la ley ne sōt tenus de p̄zender notice del ascun money que nest curreant per Proclamation. Et p̄ ceo, *Wilsott* dit 34.H.6. fol. 12.a. nous ne somus apprise de 6.l. Flemish, come somus de cent Nobles. Et p̄ ceo en tous contracts de Marchants, Consuetudo & statuta loci in quem est destinata solutio, respicienda sunt, *Budeliuſ* de re Nummaria libr.2.cap.21. Et p̄ ceo fuit dit, que si a cest iour la ley serra prise, come fuit prise en temps, Ed. 1. que sur Judgement en debt done en Engleterre, sur Testatum que le defendant ne ad riens en Engleterre, mes que il ad biens & terres en Ireland, b̄riefe de execution serra agard al Justice ou Deputie de Ireland o leuier le debt la, quel b̄riefe est troue in Registro breuium Iudicialium. fol. 43. b. Le sum en tiel case serroit leuie selonque le rate de Irish money, & nemy de English money, & ent tiel coine que serroit curreant en cest realme al temps de execution fait.

Et accorzdant a cest resolution, plusors auters cases sur mesme le point fueront apres rule & aduidge, en les seueral courts de Record al Dublin.



Hill' 5. Iacobi.

En banke le Roy.

Le case de Tanistry.

*Murrough m^r Brien demiseine Brien m^r Owen versus Cahir & cal-
laghan & demiseine
us Shiffe*



Electione firmæ enter Murrough mac Brien pl. et Cahir O callaghan Defend-
ant sur generall issue toyne, le Jurp
troue speciall verdict, a cest effect, viz.
Que le castle et terres de Drominy,
ou lentry et electment est suppose de-
sire fait, gisent deins certaine lieu, ou
precinct de fre, appel Publicallaghan alias O callaghans coss-
try deins le county d Cozke. Et de temps dont memozy ne
court, &c. ont estre de Tenure & Nature de Tanistry Et q en
touts les fres de Tenure & Nature de Tanistry deins Publi-
callaghan auantdit, tiel Custome ad estre vse et approue, de
temps dont memozy ne court, &c. viz. Que quaut ascun
person mozt seisse des ascis Castles, Hamors, Terres,
ou Tenements del Nature, & Teauce auantdit, que don-
ques meisme les Castles, Hamors, Terres, et Tene-
ments doent descendre, et de tout temps auantdit, ont
vse de descendre, Seniori & dignissimo viro Sanguinis &
Cognominis de tiel person, que issint mozt seisse. Et
que le File ou le Files de tiel person issint mozt seisse,
de

Le Case de Tanistry.

29

De tous temps auant dit, ne fueront enheritables, De teile
terres ou tenemens, ou de aucun pt de eux.

Le Jury trouue ouster, que (accordant a cest Pettigree.)



Donogh mac Teige O callaghan, chiefe de son nomme, fuit
seille del s'ntourie ou chieftainship de Publicallaghan, et
des fres auant dit, solong le custome & course del Tanistry,
& issint seille ad issue Conoghor O callaghan. Conoghor ad
issue s'nt & file, viz. Teige & Eleanor, Teige ad issue Donogh
mac Teige il puisne, Eleanor esteant marrie al Art Okiffe,
ad issue Manus Okiffe: Conoghor O callaghan & Teige son
s'nt deuiant en le vie del Donogh mac Teige le eigne.
Après, le dit Donogh mac Teige le eigne, per froffo-
ment solongue le course del common Ley, execute estate
al Donogh mac Teige le puisne, & al heires males de son
corps, Remainder al droit heires del froffo. Donogh
mac Teige le eigne morust, Donogh mac Teige le puisne
morust sans issue male. Après que mort, un autre
Conoghor O callaghan esteant le plus eigne & le plus
digne del sang & surname del O callaghan, enter en la ter-
re ou he, Et claime de tener ceo come Seignior ou chiefe-
caine

Donogh M^e Teige O callaghan

Conoghor O callaghan

Teige
ob. with
an

Donogh M^e Teige
of Tanistry
S.P.

Eleanor H. Art O. Kiffe

Manus Okiffe

Le Case de Tanistry.

taïne de Publicallaghan, solonq le course del Tanistry, & fait de ceo seisse, prout lex postulabar.

Est trouue ouster, que le dit Conoghor, issint seisse surrender le dit terre, & tout son estate, droit, & entereit en ceo, al roigne Eliz. sur que le dit roigne, p letters patents dat. 7. Decembris, anno 37. de sa roigne, en consideration del dit surrender, regrant la dit terre, al dit Conoghor, & ses heirs, que enter, & enfeoffe bn Fagan, que enfeoffe Brien mac Owen lessoz del plaintife.

Et est darraint troue, que Art Okieffe, & Eleanor sa femme deuient, & que apres leur mort, Manus Okieffe enter, & enfeoffe Chair O callaghan le defendant, que ent & eieit le lessee del Brien mac Owen, & sur tout cest matter, les Juroz pziont le aduise del court, &c.

Sur que bn maine question surdoit, viz. si le tittle del hñe al common ley, que le defendat ad, ou le tittle del Tanist que estate le lessoz del plaintife ad terra pferre, come cest case est. Et en le discussing de cest question 3. pzincipall pointz fueront moue & argue.

1 Si le dit custome de Tanistry soit void ou nemp en luy mesme, ou auterment abolish p le Introduction del cõmon ley D'engleteere.

2 Admit, que soit bone custome, & nient abolish p le common ley, si soit discontinue & destruy p le feoffement, que creat & linit estate taile en la terre, solonque le course del cõmon ley, issint que ne terra reduce al course de Tanistry, quant le estate taile est determine.

3 Si Conoghor O callaghan que enter come Tanist apz le estate taile determine, ad gaine melieur estate p son surrender al Roigne Elizabeth, & le regrant fait a luy, per letters patents.

1 **Q**uant al pzimer point, fait obiet per le Cõunsell del plaintife, que le dit custome de Tanistry, come est troue, est bone per les rules del common ley. Car 3. choses doent concurre, p faire bone custome, Antiquity, continuance, & Reason. Et est expressement troue, que cest custome est auintient deuant temps de memozy, & continuall de temps dont memozy ne court, & par ceo il soit reasonable auxy, ceo ad toutz qualitez de bone custome. Et

Et certes, cest custome que done la terre al plus eigne & plus digne home del sang et surnosme, del cesty que morust seisie, est foiz reasonable, en cest Realme, p ceo que il poet mieur manure la terre, & defender ceo, que vn enfant ou feme. Et le continuance de terre en le sang, et surnosme est bone reason et consideration de raiser vse, Plowd. Comment. fol. 305. Baintons case, ou le dignitie del heire male est expresse en plusors cases : p que cest custome ne fault reason p defence de ceo, & Littl. Libr. 1. fol. 17. a. mise cest rule, cestascavoir, que en diuers Seigniozies et diuers Mannors sont plusors et disus customes, qnt a pnt Tenementz, et quant a pleader, et quant al auts choses, & tout ceo que n'est pas encounf reason, poet bñ est admt & allow.

Et coment que cest custome serroit repugnant al rule del common ley, ceo ne proue ceo destre vncreasonable : car les customes de Borough Englisb, et de Gavelkind sont contrarie al common ley en le point de discent de Inheritance, & vncore sont approuue come reasonable customes : issint & custome del turning le Plow sur headland & vn aut, et de Dzier nettes sur auter terre, 21. Edw. 4. 50. 8. Edw. 4. 19. Issint que feoffment ou garrantie fuit p tenant en taile, ne serra discontinuance, ceo est contrary al rule del Ley, & vncore bon custome, 30. Ass. p. 47. Et plusors cases fueront mise a cest entent.

Et sicome cest custome n'est boide pur fault de reason, issint n'est boide pur fault de certaintie. Car la terre discedera al plus eigne & plus digne : le plus eigne poet estre certainement conus, mes le plus digne semble destre vncertain, car que serra Judge de ceo : certes la Ley, que est tout foiz certaine & infallible en sa Judgement. Et la Ley dira que le plus eigne est le plus digne, cibien in cest Case come en auter Cases de cest nature. Et pur ceo Lit. dit en le Case de 3. freres, si le mulnes purchase terres, & morust sans issue, le eigne frere auera la terre per discent, pur ceo que le eigne est plus digne de sang : Et en le chapter de Remitter, il dit, lon home ad 2. titles a terres & Tenementz, viz. vn plus auncient, & auter plus darraigne, la Ley adiudgera luy eins per force del plus eigne title, pur ceo, q le plus eigne title, est le plus sure, title, & le plus digne title,

Le Case de Tanistry.

title, Vid. Plow. Comment. 259. a. Mes admitt, que l' affirmative part del custome, viz. que la terre descendra al pluís etgne, et pluís digne home, &c. serroit voyde. Vncore le negative part del custome, viz. que les files ne serront inheritable, cest bone : car sont plusors bone customes en l' negative, encounter les expresse Maximes & Rules del common Ley. Come q' feme nauera dower, ou el ad receiue part des deniers p' le sale del Terre, 20. Ed. 3. Br. Customs 53. Et le custome en Kent, que le Seignior nauera terre p' Escheat, The father to the bough, and the sonne to the plow. Et le custome de que Kitchen parle, fol. 149. b. que si home marry widdow el nauera dower. Et donque si cest part del custome soit bone, Judgint terra done encounf le defendât, p' ceo que il deriue son title del file, que est heire generall al common Ley.

Et cest custome nest abolish p' l' introduction del commo ley p' diuers reasons.

1 Pur ceo que est reasonable custome, et agreeable al rules del common ley, come duant est monstre : & si cest reason est resoluë 21. Eliz. Dyer 363. q' le custome de vil d' Denbigh in Gales, q' un feme couert ouesque sa Baron. poet aliz sa terre p' surrender, & examination en Court la, & ceo liera la feme, & ses heirs come fine nest toll p' le statut d' 27. H. 8. coment que cest Act introduce le common Ley en Gales, come appiert per le title de ceo, For Lawes and Iustice to bee ministred in Wales, in like force as in the Realme of England.

2 Coment que le Brehon ley que fuit le common ley del Irishrie deuant le Conquest, soit abolish p' establisment del Common Ley D' engleterre. que fuit iustment fayt selonque la ley del nations, nient obstant que ceo fuit un Christian kingdome, come appiert en Caluins Case en le 7. part de les Reports de le Seignior Cooke 17. b. vncor les particular customes poent estoier, come le custome de Gauilkinde in Kent, & auters customes en auter particular lieues en Engleterre remainont apres le Norman Conquest.

3 Doet estre collect per le Judgement de Parliament 12. Elizabeth cap. 5. que cest custome de Tanistry ne fuit toll per le common ley, pur ceo que per cest Act, The pretended Lords, gentlemen, & freeholders of the Irishrie, and degenerated

Le Case de Tanistry.

31

rated men of English name, holding their land by Irish custom, ont p cest act powver de surrender lour fies al roign, & de prender estates p letters patents. queux seront bone & effectual en la ley, enuers tous persons, fozsque ceux, que ont estate, title, ou droit al dits terres p le due course bl common ley.

Quant al second point fuit obiet que le done en taile le remainder al droit heires del donoz, nad desroy cest custome, pur 2. raisons.

1 Pur ceo que cestuy que ad terre de tenure & nature del Tanistry, nad tiel estate, que il poct alien la terre en perpetuitie, mes solement pur son vie, & son estate est qualifie cō le estate del person ou prebend, issint que le fee simple est en Abeyance.

2 Pur ceo que cest custome est enherent en la terre, et courge oue la terre, & ne poct estre extinguis p aucun alienation mes continue en quecunque maines, cibien en possession del roy que del subiect: come customes de Borough English, & Gavelkind. Car si terre en Borough English soit done en taile, le puisne firs auera formedone, 11. Ed. 3. firs. Formedone 30. 32. Ed. 3. firs. Age. 81. 2. Eliz. 176. b. Et si terre en Gavelkind soit done en taile le Remainder al droit heires del donoz come nostre case est, cibien le remainder, que le possession irra al heires p le custome, & nemy al heires p le common ley, 26. H. 8. 4. b. 6. Ed. 6. Dier 72. b. Et coment que soit tenus, 37. H. 8. Brooke Done & Rem. 42. que si terre en Gavelkind, soit lessée pur vie, remainder al droit heires de l. S. Si l. S. ad 4. firs, & deute, que le remainder irra al eigne, car il est droit heire, et ceo est nolme del purchase, vucoze ceo differ de nostre case, car le remainder limit al droit heires del donoz n'est fozsque reversion, & le heire auera red per discent. Et que le possession del Roy ne extinguis tiel custome, vide 8. Henr. 7. 10. 21. Edw. 3. 46. 14. Henr. 4. 2. 3.

Quant al tierce point fuit obiet, que Conoghor O callaghan le darraine Tanist ad gaine bone estate, per le graunt de Roigne Elizabeth. Car admitt que cestuy que tiens terres per le custome de Tanistry nad af-

f

cun

Le Case de Tanistry.

cun estate per le common ley, que il poet surrender, vnc-
coze le act del Parliament, 12. Eliz. cap. 5. enable luy à sur-
render, & authoize le Seignior Deputy & Counsell de
faire warrants al Chauncelloz, de passer letters patents
al tiel pretended Seignior ou freeholder del Irishrie, &
ceo esteant fait, est ouster enact, que tiels letters patents,
seront bone & effectuell en la ley, accordeant al tenor & ef-
fect de mesme les letters patents, enuers tous persons
forsque ceux, que ont droit al dits terres, per le due course
de la common ley. Donque le graunt fait al Conoghor,
esteant donques pretended Seignior del Publicallaghan,
seroit bone & effectuell, coment que il ne surrender bone
estate al common ley. Car le surrender nest que ceremony
prescribed per le act destre fait per le Irishry, al fine que
seront eslop en apres de claïmer leur Irish chiefties &
exactions, ou auter title forsque desouth les letters pa-
tents. Mes le finall purpose de feloys del act fuit settler
touts les possessions de cest Realme en le course del com-
mon ley.

Auxi cẽ grant serẽ bone versus le def. que deriue son e-
state del Eleanor, que fuit le droit heire del Donogh mac
Teige le Donor, car si le custome continue come ils ont argue
el ne fuit enheritable, & issint nad aucun estate p la course dẽ
common ley.

MEs dauter part, fuit respond p le counsell del Defen-
dant, & resoluẽ p le court, que le dit custome del Tani-
strie fuit boyde en luy mesme & abolish quant la
common ley d'engleterre fuit establis. Mes admitt q
le custome ad estre bone vncoze le conueiaunce de la terre,
accordeant al course bone, que del common ley, ad destruy
cest custome in cẽ terre a tous iours: Et que le dit Conog-
hor O callaghan, ad gaine nul estate p les letters patents
dat. 37. de la Roigne Eliz. come ceo graunt est troue en le
special verdict.

Et pur le premier point touchant le custome, fuit pri-
merement dit, que custome in l'entendement del ley,
est tiel vsage, que ad obtaine vim legis, & est reuera
un binding ley al tiel particular lieu, persons, & choses que
ceo

Le Case de Tanistry.

32

ceo concerne : et tiel custome ne poet estre establiss p grant Del roy 49. Ed. 3. 3. 2. ne p ac de Parliament. Mes est ius non scriptū, et fait p le people tantū de tiel lieu, ou le custōe curege. Car lou le people troue ascun act destre bone et benificial, et apt et agreeable a lour nature et disposition, ils vfont & practifont ceo de temps en tēps, & issint p frequent iteration & multiplication de cest acte, custome est fait, & esteant vse de temps dont memoze ne court, obtaine le force de vn ley. Et issint le rule, 44. Ed. 3. 19. est Bray que nul ley oblige le people, forsque ceo. que est fait per consent Del people. Car consent poet estre expresse cibien factō que verbo, & ceo que est expresse factō, est plus fort, que ceo que est expresse verbo, & ceo que est expresse p plusors acts, et continuall acts de mesme le kind, est custome. Et issint briefement, custome est vn reasonable act, iterated, multiplied, & continued per le people, de temps dont memory ne court. Et ceo est le definition de custome, que ad le vertue & force Del ley.

2 Secondment fuit dit, que tiel custome doet auer 4. vnseperable properties, 1. doet auer reasonable commencement, 2. doet estre certeine & nemy ambiguous, 3. doet auer continuance sans interruption, de temps dōt memozy ne court, 4. doet estre submit al prerogative Del Roy, & nient exalt encounter ceo.

1 Le commencement Del custome (car chescun custome ad vn commencement, comt que le memoze Del home ne extend a ceo, come le riuier Nilus, ad vn fountaine, coment q les Geographers ne poent trouer ceo) doet estre sur reasonable ground & cause. Car si fuit vnrasonable en le originall, nul vlsage ou continuāce poet faire ceo bone. Quod ab initio non valuit, tractu temporis non conualefcet.

Mes pur distinguisher, que est vnrasonable custome, et que nemy, ceuz differences fueront mise. Chescun custome n'est vnrasonable que est contrarie al particular rule ou maxime Del positive ley : Car consuetudo ex certa causa rationabili vsitata priuat communem legem, Litt. 37. b. Come les customes de Gavelkind, & Boroughenglish sont encounter le maxime de descent de inheritance, 35. Hen. 6. 36. a. et le custome de Kent, The father to the bough, the sonne to the plow, est encounter le maxime des Cicheats,

Le Case de Tanistry.

¶ que lessen taile entra, nient obstant le feoffment de son pere oue garrant, est encontre le Maxime de discontinuance. Et issint plusors autres customes queux sont contrary al particular rules del ley, sont vncoze tenus & adiudge reasonable, car poent auer reasonable commencement, lou ne sont pzeudiciall al commonweale, ne al pzeient interest del ascun particular person.

¶ Vncoze custome poet estre pzeudicial al interest de particular person, & reasonable auxy, lou est p le benefitt del commonweale in general. Come custome de faire Bulwarthes sur tre de vn aut p le defence del realme, 36. H. 8. Dier 60. b. & de razer measons in publico incendio, 29. H. 8. Dier 36. b. Issint de turner le ploio sur le headland de vn auter, en fauour de husbandry, & de dzier nets sur terre de vn auter, en fauour de fishing & maintenance de nauigation, 8. E. 4. 18. 21. E. 4. 28. Mes custome q est contrary al publike bien, q est le scope & generall end de tous leys (Salus populi suprema lex) ou iniurious & pzeudicial al multitude, & beneficial tantum al ascun particular person, tiel custome est repugnāt al ley de reason, q est desuis tous positue leys, & p ceo ne poet auer reasonable ou loyall commencement, mes est voyde ab initio & nul pzecription de temps poet faire ceo bone.

Et pur ceo plusors customes queux out estre adiudge hoïd en nostre liuers, come esteant vnreasonable encontre common droit, ou purement encontre ley, si lour nature & quality sont consider, seront troue iniurious al multitude, & pzeudicial al commonwealth, & de auer lour commencement (pur le plus part) per oppression & extortion des Seigniors & graund homes. 2. Henr. 4. 24. En replein le defendant aboio que la tert ou ac, est vn pze, ou le plain-tise. Doet auer common apze le feyn fanche: mes que est tiel custome deins le Mannor, que nul commoner mettera eïng les auers tant que le seignior ad mis eïng les auers. Et le Markham dit, ceo est maruelous custome, si le Seignior ne boet vnques mettre eïng les auers, les commoners perdront lour common. Cest custome la fuit adiudge boïde, pur ceo que ceo fuit iniurious al multitude de commoners, & beneficial tantum al Seignior de la bill. Issint per Littleton fol. 46. Custome que le seignior auera sine de son

son feanchetenant p mariage de la fille, est tenuz boyd: & custome: que le seignior del mannoz detainera distresse ppris sur les demesnes, tant que fine soit fait a luy p le damage a sa volunt, est auz boyd illint, 3. Eli. Dier 199. b. custome que le seignior pprendra p harriot le beaſt de estranger le vant & couchant sur la terre de tenant: Et 21. H. 4. custome que le seignior del mannoz auera 3. s. pur pound: breach chescun estranger. Et 21. H. 7. 20. custome que tenant terra amercee sil ne mist ses auers en le pound del seignior. Tous ces customes coment que sont beneficial al seignior en particulier: uncoze pur ceo que sont prejudicial al multitude de subiects, ou al commonwealth en general, & commenceront par tozt & usurpation, & nemy p voluntary consent del people, pur ceo sont adudge unreasonable & void en ley.

2 Custome doet estre certaine. Car incerta pro nullis habetur. Et consuetudo ex certa causa rationabili visitata prius communem legem: La. 3. Des essential qualites de bone custome sont expresse, viz. Certaintie, reasonableness, usage ou continuance, 13. Edw. 3. Fitz. Dum fuit infra etatem. 3. Diers de Dum fuit infra etatem fuit pozt bers en fait, le tenant pleade custome, que quaut enfant est de este age que il pozt counter, xij. b. ou mesure ou Aine de Royape que son seoffment terra bone. Cest custome est adudge void p le incertaintie, 14. Edw. 3. Fitz. Barr. 277. En trespass des arbers empoztres, le def. pleade custome, q cestz des tenants del mannoz que pimes vient al lieu, ou se. auera tous windsals la: cest custome est boyd auz, pur le incertainty. Et la reason alleage la est, q ceo ne gist in prescription, que gist en volunt del home, car la volunt del home est incertaine. 42. Edw. 3. 46. en Rep. pozt per Byles de Shafcon, le def. avoys come bailiff al viscount de Dorset, q prescribe de tenner son turne en le lieu ou. sc. Et de auz de toctennie demy mark. ou chival, come on reboard al chescun turne. Cest prescription est tenuz void p le incertainty. Car est auz dit la, que ces gill en le volunt del donoz que est incertaine.

Et surter ceo, 2. raisons fueront mise pur que incertain custome seroit void, 1. p ceo que incertain chose ne pozt estre continue de temps dont memoze ne Court, sans

Le Case de Tanistry!

interruption, & pur ceo que home ne poet prescriber en chose que ne puisse al commencement estre bien graunt
13. Henr. 7. 18. b. mes vncertain chose ne puisse buques estre bie graunt, & pur ceo prescription de vncertain chose est void auxy.

3. Customes boet ausercontinuer sans interruption de temps dont memoze ne court. Car si soit discontinue deins temps de memoze, le custome est ale: come si copphold soit lessé pur le Seignior del manoir, pur vie ou pur ans, accordant al comse de comun ley, ne terra iamales demise come Copphold accordant al custome apays.

8. H. 8. Dieryob. Consuetudo semel reprobata non potest amplius induci. Car si soit continué fait custome, discontinuace de troz esors. Nihil ratiopublicis est naturae li aequitati, quam vnumquodque dissolui, eo ligamine quoli gatum est.

4. Custome que se exalt sur le prerogative del Roy, ceo est void auxy envers le roy. Car prescription de temps fait custome, mes nullum tempus occurrat Regi 49. Ed. 3. 3. en le case de Whit Tawers, le custome de London & fait coppozationis est temps void. Car le roy soleit poet ceo faire p son prerogative. 35. H. 8. 2. custome de London de retainer biens mise in mortage, tant que satisfaction soit fait blmoze sur ens apppoint, ne s'tend al Seignior del roy. Ce si home ad Coll, ou tozer, ou stray, p prescription, ceo ne s'tend al blmoze del roy. Quant prescription de aver sanctuary par tresson, ou d'aver Caralla felonum, &c. est void vers le roy, pur ceo q' tel p'viledge exaltat se in prerogativa regis. 1. Hen. 7. 23. b. 30. p. 31. b. 32. a. 33. a. 34. a. 35. a. 36. a. 37. a. 38. a. 39. a. 40. a. 41. a. 42. a. 43. a. 44. a. 45. a. 46. a. 47. a. 48. a. 49. a. 50. a. 51. a. 52. a. 53. a. 54. a. 55. a. 56. a. 57. a. 58. a. 59. a. 60. a. 61. a. 62. a. 63. a. 64. a. 65. a. 66. a. 67. a. 68. a. 69. a. 70. a. 71. a. 72. a. 73. a. 74. a. 75. a. 76. a. 77. a. 78. a. 79. a. 80. a. 81. a. 82. a. 83. a. 84. a. 85. a. 86. a. 87. a. 88. a. 89. a. 90. a. 91. a. 92. a. 93. a. 94. a. 95. a. 96. a. 97. a. 98. a. 99. a. 100. a. 101. a. 102. a. 103. a. 104. a. 105. a. 106. a. 107. a. 108. a. 109. a. 110. a. 111. a. 112. a. 113. a. 114. a. 115. a. 116. a. 117. a. 118. a. 119. a. 120. a. 121. a. 122. a. 123. a. 124. a. 125. a. 126. a. 127. a. 128. a. 129. a. 130. a. 131. a. 132. a. 133. a. 134. a. 135. a. 136. a. 137. a. 138. a. 139. a. 140. a. 141. a. 142. a. 143. a. 144. a. 145. a. 146. a. 147. a. 148. a. 149. a. 150. a. 151. a. 152. a. 153. a. 154. a. 155. a. 156. a. 157. a. 158. a. 159. a. 160. a. 161. a. 162. a. 163. a. 164. a. 165. a. 166. a. 167. a. 168. a. 169. a. 170. a. 171. a. 172. a. 173. a. 174. a. 175. a. 176. a. 177. a. 178. a. 179. a. 180. a. 181. a. 182. a. 183. a. 184. a. 185. a. 186. a. 187. a. 188. a. 189. a. 190. a. 191. a. 192. a. 193. a. 194. a. 195. a. 196. a. 197. a. 198. a. 199. a. 200. a. 201. a. 202. a. 203. a. 204. a. 205. a. 206. a. 207. a. 208. a. 209. a. 210. a. 211. a. 212. a. 213. a. 214. a. 215. a. 216. a. 217. a. 218. a. 219. a. 220. a. 221. a. 222. a. 223. a. 224. a. 225. a. 226. a. 227. a. 228. a. 229. a. 230. a. 231. a. 232. a. 233. a. 234. a. 235. a. 236. a. 237. a. 238. a. 239. a. 240. a. 241. a. 242. a. 243. a. 244. a. 245. a. 246. a. 247. a. 248. a. 249. a. 250. a. 251. a. 252. a. 253. a. 254. a. 255. a. 256. a. 257. a. 258. a. 259. a. 260. a. 261. a. 262. a. 263. a. 264. a. 265. a. 266. a. 267. a. 268. a. 269. a. 270. a. 271. a. 272. a. 273. a. 274. a. 275. a. 276. a. 277. a. 278. a. 279. a. 280. a. 281. a. 282. a. 283. a. 284. a. 285. a. 286. a. 287. a. 288. a. 289. a. 290. a. 291. a. 292. a. 293. a. 294. a. 295. a. 296. a. 297. a. 298. a. 299. a. 300. a. 301. a. 302. a. 303. a. 304. a. 305. a. 306. a. 307. a. 308. a. 309. a. 310. a. 311. a. 312. a. 313. a. 314. a. 315. a. 316. a. 317. a. 318. a. 319. a. 320. a. 321. a. 322. a. 323. a. 324. a. 325. a. 326. a. 327. a. 328. a. 329. a. 330. a. 331. a. 332. a. 333. a. 334. a. 335. a. 336. a. 337. a. 338. a. 339. a. 340. a. 341. a. 342. a. 343. a. 344. a. 345. a. 346. a. 347. a. 348. a. 349. a. 350. a. 351. a. 352. a. 353. a. 354. a. 355. a. 356. a. 357. a. 358. a. 359. a. 360. a. 361. a. 362. a. 363. a. 364. a. 365. a. 366. a. 367. a. 368. a. 369. a. 370. a. 371. a. 372. a. 373. a. 374. a. 375. a. 376. a. 377. a. 378. a. 379. a. 380. a. 381. a. 382. a. 383. a. 384. a. 385. a. 386. a. 387. a. 388. a. 389. a. 390. a. 391. a. 392. a. 393. a. 394. a. 395. a. 396. a. 397. a. 398. a. 399. a. 400. a. 401. a. 402. a. 403. a. 404. a. 405. a. 406. a. 407. a. 408. a. 409. a. 410. a. 411. a. 412. a. 413. a. 414. a. 415. a. 416. a. 417. a. 418. a. 419. a. 420. a. 421. a. 422. a. 423. a. 424. a. 425. a. 426. a. 427. a. 428. a. 429. a. 430. a. 431. a. 432. a. 433. a. 434. a. 435. a. 436. a. 437. a. 438. a. 439. a. 440. a. 441. a. 442. a. 443. a. 444. a. 445. a. 446. a. 447. a. 448. a. 449. a. 450. a. 451. a. 452. a. 453. a. 454. a. 455. a. 456. a. 457. a. 458. a. 459. a. 460. a. 461. a. 462. a. 463. a. 464. a. 465. a. 466. a. 467. a. 468. a. 469. a. 470. a. 471. a. 472. a. 473. a. 474. a. 475. a. 476. a. 477. a. 478. a. 479. a. 480. a. 481. a. 482. a. 483. a. 484. a. 485. a. 486. a. 487. a. 488. a. 489. a. 490. a. 491. a. 492. a. 493. a. 494. a. 495. a. 496. a. 497. a. 498. a. 499. a. 500. a. 501. a. 502. a. 503. a. 504. a. 505. a. 506. a. 507. a. 508. a. 509. a. 510. a. 511. a. 512. a. 513. a. 514. a. 515. a. 516. a. 517. a. 518. a. 519. a. 520. a. 521. a. 522. a. 523. a. 524. a. 525. a. 526. a. 527. a. 528. a. 529. a. 530. a. 531. a. 532. a. 533. a. 534. a. 535. a. 536. a. 537. a. 538. a. 539. a. 540. a. 541. a. 542. a. 543. a. 544. a. 545. a. 546. a. 547. a. 548. a. 549. a. 550. a. 551. a. 552. a. 553. a. 554. a. 555. a. 556. a. 557. a. 558. a. 559. a. 560. a. 561. a. 562. a. 563. a. 564. a. 565. a. 566. a. 567. a. 568. a. 569. a. 570. a. 571. a. 572. a. 573. a. 574. a. 575. a. 576. a. 577. a. 578. a. 579. a. 580. a. 581. a. 582. a. 583. a. 584. a. 585. a. 586. a. 587. a. 588. a. 589. a. 590. a. 591. a. 592. a. 593. a. 594. a. 595. a. 596. a. 597. a. 598. a. 599. a. 600. a. 601. a. 602. a. 603. a. 604. a. 605. a. 606. a. 607. a. 608. a. 609. a. 610. a. 611. a. 612. a. 613. a. 614. a. 615. a. 616. a. 617. a. 618. a. 619. a. 620. a. 621. a. 622. a. 623. a. 624. a. 625. a. 626. a. 627. a. 628. a. 629. a. 630. a. 631. a. 632. a. 633. a. 634. a. 635. a. 636. a. 637. a. 638. a. 639. a. 640. a. 641. a. 642. a. 643. a. 644. a. 645. a. 646. a. 647. a. 648. a. 649. a. 650. a. 651. a. 652. a. 653. a. 654. a. 655. a. 656. a. 657. a. 658. a. 659. a. 660. a. 661. a. 662. a. 663. a. 664. a. 665. a. 666. a. 667. a. 668. a. 669. a. 670. a. 671. a. 672. a. 673. a. 674. a. 675. a. 676. a. 677. a. 678. a. 679. a. 680. a. 681. a. 682. a. 683. a. 684. a. 685. a. 686. a. 687. a. 688. a. 689. a. 690. a. 691. a. 692. a. 693. a. 694. a. 695. a. 696. a. 697. a. 698. a. 699. a. 700. a. 701. a. 702. a. 703. a. 704. a. 705. a. 706. a. 707. a. 708. a. 709. a. 710. a. 711. a. 712. a. 713. a. 714. a. 715. a. 716. a. 717. a. 718. a. 719. a. 720. a. 721. a. 722. a. 723. a. 724. a. 725. a. 726. a. 727. a. 728. a. 729. a. 730. a. 731. a. 732. a. 733. a. 734. a. 735. a. 736. a. 737. a. 738. a. 739. a. 740. a. 741. a. 742. a. 743. a. 744. a. 745. a. 746. a. 747. a. 748. a. 749. a. 750. a. 751. a. 752. a. 753. a. 754. a. 755. a. 756. a. 757. a. 758. a. 759. a. 760. a. 761. a. 762. a. 763. a. 764. a. 765. a. 766. a. 767. a. 768. a. 769. a. 770. a. 771. a. 772. a. 773. a. 774. a. 775. a. 776. a. 777. a. 778. a. 779. a. 780. a. 781. a. 782. a. 783. a. 784. a. 785. a. 786. a. 787. a. 788. a. 789. a. 790. a. 791. a. 792. a. 793. a. 794. a. 795. a. 796. a. 797. a. 798. a. 799. a. 800. a. 801. a. 802. a. 803. a. 804. a. 805. a. 806. a. 807. a. 808. a. 809. a. 810. a. 811. a. 812. a. 813. a. 814. a. 815. a. 816. a. 817. a. 818. a. 819. a. 820. a. 821. a. 822. a. 823. a. 824. a. 825. a. 826. a. 827. a. 828. a. 829. a. 830. a. 831. a. 832. a. 833. a. 834. a. 835. a. 836. a. 837. a. 838. a. 839. a. 840. a. 841. a. 842. a. 843. a. 844. a. 845. a. 846. a. 847. a. 848. a. 849. a. 850. a. 851. a. 852. a. 853. a. 854. a. 855. a. 856. a. 857. a. 858. a. 859. a. 860. a. 861. a. 862. a. 863. a. 864. a. 865. a. 866. a. 867. a. 868. a. 869. a. 870. a. 871. a. 872. a. 873. a. 874. a. 875. a. 876. a. 877. a. 878. a. 879. a. 880. a. 881. a. 882. a. 883. a. 884. a. 885. a. 886. a. 887. a. 888. a. 889. a. 890. a. 891. a. 892. a. 893. a. 894. a. 895. a. 896. a. 897. a. 898. a. 899. a. 900. a. 901. a. 902. a. 903. a. 904. a. 905. a. 906. a. 907. a. 908. a. 909. a. 910. a. 911. a. 912. a. 913. a. 914. a. 915. a. 916. a. 917. a. 918. a. 919. a. 920. a. 921. a. 922. a. 923. a. 924. a. 925. a. 926. a. 927. a. 928. a. 929. a. 930. a. 931. a. 932. a. 933. a. 934. a. 935. a. 936. a. 937. a. 938. a. 939. a. 940. a. 941. a. 942. a. 943. a. 944. a. 945. a. 946. a. 947. a. 948. a. 949. a. 950. a. 951. a. 952. a. 953. a. 954. a. 955. a. 956. a. 957. a. 958. a. 959. a. 960. a. 961. a. 962. a. 963. a. 964. a. 965. a. 966. a. 967. a. 968. a. 969. a. 970. a. 971. a. 972. a. 973. a. 974. a. 975. a. 976. a. 977. a. 978. a. 979. a. 980. a. 981. a. 982. a. 983. a. 984. a. 985. a. 986. a. 987. a. 988. a. 989. a. 990. a. 991. a. 992. a. 993. a. 994. a. 995. a. 996. a. 997. a. 998. a. 999. a. 1000. a. 1001. a. 1002. a. 1003. a. 1004. a. 1005. a. 1006. a. 1007. a. 1008. a. 1009. a. 1010. a. 1011. a. 1012. a. 1013. a. 1014. a. 1015. a. 1016. a. 1017. a. 1018. a. 1019. a. 1020. a. 1021. a. 1022. a. 1023. a. 1024. a. 1025. a. 1026. a. 1027. a. 1028. a. 1029. a. 1030. a. 1031. a. 1032. a. 1033. a. 1034. a. 1035. a. 1036. a. 1037. a. 1038. a. 1039. a. 1040. a. 1041. a. 1042. a. 1043. a. 1044. a. 1045. a. 1046. a. 1047. a. 1048. a. 1049. a. 1050. a. 1051. a. 1052. a. 1053. a. 1054. a. 1055. a. 1056. a. 1057. a. 1058. a. 1059. a. 1060. a. 1061. a. 1062. a. 1063. a. 1064. a. 1065. a. 1066. a. 1067. a. 1068. a. 1069. a. 1070. a. 1071. a. 1072. a. 1073. a. 1074. a. 1075. a. 1076. a. 1077. a. 1078. a. 1079. a. 1080. a. 1081. a. 1082. a. 1083. a. 1084. a. 1085. a. 1086. a. 1087. a. 1088. a. 1089. a. 1090. a. 1091. a. 1092. a. 1093. a. 1094. a. 1095. a. 1096. a. 1097. a. 1098. a. 1099. a. 1100. a. 1101. a. 1102. a. 1103. a. 1104. a. 1105. a. 1106. a. 1107. a. 1108. a. 1109. a. 1110. a. 1111. a. 1112. a. 1113. a. 1114. a. 1115. a. 1116. a. 1117. a. 1118. a. 1119. a. 1120. a. 1121. a. 1122. a. 1123. a. 1124. a. 1125. a. 1126. a. 1127. a. 1128. a. 1129. a. 1130. a. 1131. a. 1132. a. 1133. a. 1134. a. 1135. a. 1136. a. 1137. a. 1138. a. 1139. a. 1140. a. 1141. a. 1142. a. 1143. a. 1144. a. 1145. a. 1146. a. 1147. a. 1148. a. 1149. a. 1150. a. 1151. a. 1152. a. 1153. a. 1154. a. 1155. a. 1156. a. 1157. a. 1158. a. 1159. a. 1160. a. 1161. a. 1162. a. 1163. a. 1164. a. 1165. a. 1166. a. 1167. a. 1168. a. 1169. a. 1170. a. 1171. a. 1172. a. 1173. a. 1174. a. 1175. a. 1176. a. 1177. a. 1178. a. 1179. a. 1180. a. 1181. a. 1182. a. 1183. a. 1184. a. 1185. a. 1186. a. 1187. a. 1188. a. 1189. a. 1190. a. 1191. a. 1192. a. 1193. a. 1194. a. 1195. a. 1196. a. 1197. a. 1198. a. 1199. a. 1200. a. 1201. a. 1202. a. 1203. a. 1204. a. 1205. a. 1206. a. 1207. a. 1208. a. 1209. a. 1210. a. 1211. a. 1212. a. 1213. a. 1214. a. 1215. a. 1216. a. 1217. a. 1218. a. 1219. a. 1220. a. 1221. a. 1222. a. 1223. a. 1224. a. 1225. a. 1226. a. 1227. a. 1228. a. 1229. a. 1230. a. 1231. a. 1232. a. 1233. a. 1234. a. 1235. a. 1236. a. 1237. a. 1238. a. 1239. a. 1240. a. 1241. a. 1242. a. 1243. a. 1244. a. 1245. a. 1246. a. 1247. a. 1248. a. 1249. a. 1250. a. 1251. a. 1252. a. 1253. a. 1254. a. 1255. a. 1256. a. 1257. a. 1258. a. 1259. a. 1260. a. 1261. a. 1262. a. 1263. a. 1264. a. 1265. a. 1266. a. 1267. a. 1268. a. 1269. a. 1270. a. 1271. a. 1272. a. 1273. a. 1274. a. 1275. a. 1276. a. 1277. a. 1278. a. 1279. a. 1280. a. 1281. a. 1282. a. 1283. a. 1284. a. 1285. a. 1286. a. 1287. a. 1288. a. 1289. a. 1290. a. 1291. a. 1292. a. 1293. a. 1294. a. 1295. a. 1296. a. 1297. a. 1298. a. 1299. a. 1300. a. 1301. a. 1302. a. 1303. a. 1304. a. 1305. a. 1306. a. 1307. a. 1308. a. 1309. a. 1310. a. 1311. a. 1312. a. 1313. a. 1314. a. 1315. a. 1316. a. 1317. a. 1318. a. 1319. a. 1320. a. 1321. a. 1322. a. 1323. a. 1324. a. 1325. a. 1326. a. 1327. a. 1328. a. 1329. a. 1330. a. 1331. a. 1332. a. 1333. a. 1334. a. 1335. a. 1336. a. 1337. a. 1338. a. 1339. a. 1340. a. 1341. a. 1342. a. 1343. a. 1344. a. 1345. a. 1346. a. 1347. a. 1348. a. 1349. a. 1350. a. 1351. a. 1352. a. 1353. a. 1354. a. 1355. a. 1356. a. 1357. a. 1358. a. 1359. a. 1360. a. 1361. a. 1362. a. 1363. a. 1364. a. 1365. a. 1366. a. 1367. a. 1368. a. 1369. a. 1370. a. 1371. a. 1372. a. 1373. a. 1374. a. 1375. a. 1376. a. 1377. a. 1378. a. 1379. a. 1380. a. 1381. a. 1382. a. 1383. a. 1384. a. 1385. a. 1386. a. 1387. a. 1388. a. 1389. a. 1390. a. 1391. a. 1392. a. 1393. a. 1394. a. 1395. a. 1396. a. 1397. a. 1398. a. 1399. a. 1400. a. 1401. a. 1402. a. 1403. a. 1404. a. 1405. a. 1406. a. 1407. a. 1408. a. 1409. a. 1410. a. 1411. a. 1412. a. 1413. a. 1414. a. 1415. a. 1416. a. 1417. a. 1418. a. 1419. a. 1420. a. 1421. a. 1422. a. 1423. a. 1424. a. 1425. a. 1426. a. 1427. a. 1428. a. 1429. a. 1430. a. 1431. a. 1432. a. 1433. a. 1434. a. 1435. a. 1436. a. 1437. a. 1438. a. 1439. a. 1440. a. 1441. a. 1442. a. 1443. a. 1444. a. 1445. a. 1446. a. 1447. a. 1448. a. 1449. a. 1450. a. 1451. a. 1452. a. 1453. a. 1454. a. 1455. a. 1456. a. 1457. a. 1458. a. 1459. a. 1460. a. 1461. a. 1462. a. 1463. a. 1464. a. 1465. a. 1466. a. 1467. a. 1468. a. 1469. a. 1470. a. 1471. a. 1472. a. 1473. a. 1474. a. 1475. a. 1476. a. 1477. a. 1478. a. 1479. a. 1480. a. 1481. a. 1482. a. 1483. a. 1484. a. 1485. a. 1486. a. 1487. a. 1488. a. 1489. a. 1490. a. 1491. a. 1492. a. 1493. a. 1494. a. 1495. a. 1496. a. 1497. a. 1498. a. 1499. a. 1500. a. 1501. a. 1502. a. 1503. a. 1504. a. 1505. a. 1506. a. 1507. a. 1508. a. 1509. a. 1510. a. 1511. a. 1512. a. 1513. a. 1514. a. 1515. a. 1516. a. 1517. a. 1518. a. 1519. a. 1520. a. 1521. a. 1522. a. 1523. a. 1524. a. 1525. a. 1526. a. 1527. a. 1528. a. 1529. a. 1530. a. 1531. a. 1532. a. 1533. a. 1534. a. 1535. a. 1536. a. 1537. a. 1538. a. 1539. a. 1540. a. 1541. a. 1542. a. 1543. a. 1544. a. 1545. a. 1546. a. 1547. a. 1548. a. 1549. a. 1550. a. 1551. a. 1552. a. 1553. a. 1554. a. 1555. a. 1556. a. 1557. a. 1558. a. 1559. a. 1560. a. 1561. a. 1562. a. 1563. a. 1564. a. 1565. a. 1566. a. 1567. a. 1568. a. 1569. a. 1570. a. 1571. a. 1572. a. 1573. a. 1574. a. 1575. a. 1576. a. 1577. a. 1578. a. 1579. a. 1580. a. 1581. a. 1582. a. 1583. a. 1584. a. 1585. a. 1586. a. 1587. a. 1588. a. 1589. a. 1590. a. 1591. a. 1592. a. 1593. a. 1594. a. 1595. a. 1596. a. 1597. a. 1598. a. 1599. a. 1600. a. 1601. a. 1602. a. 1603. a. 1604. a. 1605. a. 1606. a. 1607. a. 1608. a. 1609. a. 1610. a. 1611. a. 1612. a. 1613. a. 1614. a. 1615. a. 1616. a. 1617. a. 1618. a. 1619. a. 1620. a. 1621. a. 1622. a. 1623. a. 1

naissent, & defraudont leur ames de pleasure, come Solomon dit, ils ne violent vnques improuer leur terre a le melleur vse & profit, ne edifier mealong de aucun balue, ne doner ciuile education a leur infants, mes aiant respect al present temps tant solement, serront tout ousterint carelle de leur posterity. Et ces est le veray cause del Barbarisme & desolacion que fuit en tous les Irish countries ou ce custome de Tanistry fuit en vse.

Auxy, ceo ad estre graund cause de les continuall felonies & treasons commit per les Irish en temps parauant. Car quat ils scauont que leur femes ne serront endowes, ne leur issues enheritable de leur terres, ils committeont tiels crimes oue greinder audacity: car pur affection a leur femes, & enfants, homes plus eschuoent a faire aucun felonies, come Litt' dit 196.b.

Pur que ce custome, que lessa lenheritance destre en Abeyance, & le freehold auxy, apres le mozt de chescun tenat est vnreasonable, & va en destruction del commonwealth, Et p' ceo nostre ley (que est le melior ley de mounde p' faire & preseruer vn commonwealth) comt que ceo suffer le fee simple en aucun case destre en abeyance pur vn peu de t'ps, vncoze ne voet vnques suffer le freehold destre en suspens, mes abhorre le suspension de freehold, cō natura abhorret vacuum. Et pur cest reason, si leas pur ans soit fait, le remainder al droit heir de l. s. le limitation de remainder est void. Et si tenant del roy morust sans heir, ou si donee del roy en taile morust sans issue, la terre immediatmēt est en possession del roy sans office, pur auoier ce absurdity 9. Hen 7.2.b. & pur cest reason, 6. Edw. 6. Dier 71. Terre ne poet estre appendant al office p' vie, mes al office de enheritance tantum, car si serroit appendant al office pur vie, enserroit graund inconuenience, come est la dit, viz. le franktenement serroit en suspens apres le mozt del officer, tant que nouel officer soit fait ou create, si le office ne distend al vn heir, ou al vn home que ad perpetuall succession per le common ley. Et cest le plus ape case en la ley destre resemble al case en question. Car per le custome de Tanistry, le plus eigne, & plus digne home ne tissent eins come heirs (car heir est tous soit le plus motheime de sang) mes come

Le Case de Tanistry.

come un successeur vncoze par ceo que nest encozpozate per le common ley, come vn person, ou pzebend, 40. Edward. 3. 27. ne vient éing en course de perpetuall succession, mes come officer par vie tantum, & per election: mes tanque election fait, le franktenement del terre fuit en suspens, & le fee simple & enheritance fuit toutz foitz en Abesance & if- fuit fuit nul fee simple in actu al alcun temps, contrary al ppprincipe Del cōmon ley, que de chescun terre il y ad fee simple Litt. 144. b.

Cest custome est auxy vnreasonable p auter reason, viz. p ceo que cest custome (come est troue p le speciall verdict) que la terre descendra Seniori & dignissimo viro, &c. appiert plainement de auter commencement p le vsurpation & tyrā- ny de ceuz que fueront plus potent enter eux. Come plu- soz customes, dont mention est fait deuant, ad iudge en no- stre lūers desire void en ley. commenceont p oppression et exortion de seignioz. Car le antient Brchon ley fait, que tel terre seroit al plus eigne del Scept, q fuit le veray Ta- nist, & appel en latine Secundus, estant succelloz apparant: mes par ceo que le plus eigne ne fuit tout foitz le plus an- tique, ou ne auoit le greinder number des folloowers, vn au- ter plus potuerfull person p faction & foiz main intradoit sur le plus eigne, & pzocuroit luy mesme desire elect come estant plus digne. Et comit que cē custome ad estre vse de temps dont memoze ne court, viz. de estier un tiez que soit plus digne en le opation del people, vncoze ceo fuit mal- beyes en le commencement, & malueyes en le continuance, car fuit la cause de grand effusion de sang, & mults autres mischises.

3. Auxy le negatiue part de cest custome est vnreasona- ble que tout ouherment exclude les filles de enheriter estat de fee simple. Car le Tanist, Al ad alcun estate de enheri- tance, ad fee simple, car nad aucun particular estate en tute lūnter a luy & les heires males de son corps: & est encon- ter le nature de fee simple de excluder le heire female, & le heire male fūle. Et par ceo il seroit fait soit fait al I. S. & les heires poulso que les filles ne enheriteront, ceo est voye poulso. Et lūnter soit lūnter al I. S. & les heires males, Al ad fee simple, & le heire female enheritera en default del heire

heire male. Et ceo fuit adiudge en Parliament en le case de Multon, viz. q'en tiel case les Soers enheriteront, 18. Ass. p. 5. 27. H. 8. 27. a. 9. H. 6. 22. Litt' fol. 6. b.

Et pur ceo per le Statute de Rutland, 12. Edw. 1. que establiſſe le common ley en North Gales ou le beray Irish custome de Gavelkind fuit donques ble, p quel custome le bastard enheritoit oue le legitimate, & les females fueront tout ousterment exclude de enheriter, come en cest case icy, fuit ordeine, Quod hæreditates remaneant partibiles inter hæredes masculos, sicut esse consueverunt, & fiat partitio sicut fieri consuevit, hoc excepto, quod bastardi de cætero non habeant hæreditates, nec habeant propartes cum legitimis nec sine legitimis. Et si forte hæreditas aliqua extunc pro defuncto hæredis masculi descendat ad legitimas mulieres hæredes ultimi antecessoris sui inde seisciti, volumus de gratia nostra speciali, quod mulieres legitimæ habeant propartes suas inde sibi in Curia nostra assignandas, licet hoc sit contra consuetudinem Wallensicam ante usitatam. Et cest Ordinance accorde oue le diuine Ordinance en le Case de Zelaphaad, num. cap. 27.

Secondment fuit resoluë, que cest custome fuit boyd pur le incertainty. Car ou per cest custome le terre descendroit, Seniori & dignissimo viro sanguinis & cognominis de cesty que moztust seisse, 1. le person est incertaine, 2. le estat est incertaine.

1. Pur le person a que le terre descendroit, coment que seniori soit noſme assiet certaine de prendre estat, 26. Eli. Dier 337. a. W. Humfreston conuey terre al ble de la femme pur vie, le remaïnder Seniori puero de corpore ipsius W. legitime procreato, cest limitation de estat fuit assiet certaine & bone. Car seniozity consist en pzozity de temps, & les distinctions & periods de temps secundum prius & posterius sont certaine, & poent estre bien pzoue & trie. Et pur ceo le seignioz per pzozity (quant al gard del corps del heire) sera pzeferre deuant le seignioz per posteriority, 11. Hen. 4. 18. 21. Ed. 3. 11. Stat' de W. 2. cap. 16. Et si leas pur vie soit fait, le remaïnder al cesty que pimes viendza al Dowles, le remaïnder est bone, 12. H. 7. 28. issint 14. E. 3. Fitz. Barr. 177. Custome que le tenaunt que pimes viendza

Le Case de Tanistry.

Or al Bois, auera les windfals, cest bone, car le temps de primer venir poet estre bien trie, ou si limitation fuisset al plus procheine de sang, ceo ad estre assés certain. 30.

Al. p. 47.

Mes cest parol dignissimo est cy incertaine, que ne poet estre reduce al certaintie per aucun triall ou proofo. Car le dignitie de tel home gist en le opinion de multitude, que est le plus incertaine chose de mounde.

Scinditur incertum studia in contraria vulgus.

Ilint que ascuns dirront, que le plus docte et scauant home est le plus digne, ascuns que le plus valiant home, ascuns que le plus riche home, ascuns que le plus liberall home. Et ilint le multitude ne puisset vnques agreer, et pur ceo le plus potent home fuit toutfois pferer, q est contraire al toutz leys.

Inde datæ leges, ne fortior omnia posset.

Qest si serroit referre al Judgement de plus sage hōe que fuit vnques, de Judger que est le plus digne home deins aucun pais, si prendroit bien long temps de aduiser en cest case.

Mes fuit dit, que la ley boet Judger de plus digne, et adiudgera le plus eigne desre le plus digne. Certes, en cases de descent de enheritance la ley respect le primogeniture, birthright, et l proximitie et entiertie de sang, mes ne done aucun regard al worthines et sufficencie del heire. Et pur ceo la ley fect enheritance cybien sur Ideott, ou enfant, come sur home de discretion. Pur que cest difference est prise en Sir Henry Neuils case Plow. Comment. 379. b. que vn Officer pur vie ne poet assigne ouster son office, sans speciall parol en le graunt, car la ley entend luy desre vn officer de Trust et cholen pur son science, et diligence, viz. pur son worthinesse. Mes officer de enheritance poet graunt ouster son office, car la ley ne entend que le graunt fuit fait sur confidence del sufficencie del officer, car poet descend al femme, al enfant, ou al Ideot. Et pur ceo la ley ne respect dignitie de person en case de descent

descent del enheritance. Car comment que primogeniture apant un prerogative done a ceo per la ley de Dieu, soit preferre auxy en nostre ley, & issint le plus eigne, soit en aucun sens le plus digne, vncore per cest custome la dignite est entend destre un autre qualite que seigniorie, viz. un autre vertue ou merit en le person que doit concurre ou le seigniorie. Car autrement le parol seigniorie ad estre sufficient, & le parol dignissimo ad estre idle, & p ceo le person nest plus certain en cest case, que en le case: 11. Edw. 4. 1. b. ou done est fait al un des enfants de I. S. ou 11. Henr. 7. 13. ou graunt est fait Is ou In, ou, 1. Mar. Dyer 91. a. ou graunt est fait de tant des arbers que poent raisonablement estre spare. Et plusors cases de encertaine graunts fueront mise: & suit conclude, que tel Graunt ieniori & dignissimo serroit boyde, & pur ceo tel limitation per prescription est void auxy, selonque le rule prise 13. Hen. 7. 16. b.

2 Le estate est incertaine. Car chescun que ad estate de enheritance, ad ceo, ou en naturall capacite, ou en politique capacite. Mes Tanist ne ad estate de enheritance en son naturall capacite, pur ceo que le plus eigne & plus digne nest pas heire. Car le plus digne vient eins per election, & donques nest heire, car Deus solus heredem facere potest non homo. Bracton, 62. & nest troue que la terre descendroit Seniori & dignissimo vt heredi. Mes en Gavelkind tous les firs sont appell heires, libr. Intrac. 143. a. ou le custome est pleade en cest Manner, viz. Quod terræ & tenementa de Tenura & Natura de Gavelkind sunt de tempore, &c. Inter heredem masculos partita & partibilia, & descendere debent dict. A. B. C. vt filius & heredibus, &c. Issint le puisne firs en Burrow of English est tous soit noime heire.

Auxy le Tanist ne ad enheritance p succession en politique capacite, p ceo q nest encozpozate p le common ley, come pson, ou pzevend, &c. Et sil ne ad forsque estate p vie, ceo ne poet discender. Et issint il ad nul estate de enheritance de q la ley poet pze notice, & p consequence le incertainty d son estate fait ceo void en ley.

Tierce.

Le Case de Tanistry.

Tercement fuit resoluë, que cest custome fuit interrupt & destruy en cest terre, quant Donogh mac Teig execute estate taile de ceo solonque le course del common ley. Car est difference ou custome courge ou le seignioz, & ou ceo courge ou le tenancy: car ou custome courge ou le tenancy ne lerra destruy per conueiance secundum curiam communis legis: come si sine soit leue de terre tenus en Gaulekind coment que soit vn quere, 6. Ed. 6. Dier 72. 6. Si le course de enheritance soit alter & fait descendable al heire al common ley, vncoze fuit agreee per le court icy q le custome ne fuit alter, & issint fuit tenus de terre en Bozough English, 2. Eliz. Dier 179. b.

Mes cest terre en question est parcel des Demesnes del chiefetaine ou seignoz del Publicallaghan. (Car les terres queux baont ou les cheifries tantsolemt, sont de Tenure & Nature de Tanistry) & pur ceo est semble al copihold fre que est parcel des demesnes del seignioz, & si le seignioz execute estate de ceo accordant al course del common ley le custome est ale a toutz iours. Issint est del Homage ancestrell, que est per prescription, & continuance de seignioz en sang del seignioz, & del tenancy en sang del tenant, p vn alienation solement le Homage ancestrell est ale, & le garrant y est destruy & reprisall de mesme lestate ne iammes reducera ceo, Litt. 33. b.

Auxy cest custome de Tanistry, nest enherent en la terre, come le custome de Gaulekind, ou Bozough English, mes est plustost vn personall custome que ba oue person d pluig eigne & plus digne, & pur ceo quant la terre est vn foiz conuey al auter person, viz. al heire al common ley, cest custom est anient a toutz iours.

Derainement cest custome de Tanistry serroit void 4 Denuers le Roy, come esteant preiudiciall al profit & prerogative del Roy. Car ou toutz terres sont tenus mediatement ou immediatment del roy, per cest custome le Roy perdroit tout le benefitt de son Seignourie paramount en cest terre, que fuit quasi in manu mortua, dont le Roy ne puisset vnques auer ne wardship, ne escheate, ne aucun manner de service testifiant que il fuit Seignioz

Le Case de Tanistry.

37

Seignior de la terre. Et Litt' 3 1.3. dit, que serroit incon-
uenient, & encounter reason, que aucun terra tenaunt al
auter de estate de enheritance, & vncore le Seignior auera
nul maner de seruice de luy. Et pur cest reason, le cu-
stome de Kent, the father to the bough, the soa to the plough,
extend forsqe al felony, & toll le escheat de common per-
son solement, mes ne extend al Treason, ou le Roy auera
le escheate. 22. Edw. 3. Fitz. præscr. 40. illint prescription
de auer sanctuary pur Treason est voidé, 1. Henr. 7. 23. Et
pur ceo coment que tuel Tanist n'auoit estate de enheritance
per le custome, vncore sil ad estre attainit de Treason, le
course de Eschequer icy ad tous foits estre, de scriuer la tre
come forseit on escheate al corone, niét obstant cest custome
de Tanistry.

MEs admit, que cē custome ne ad estre void en luy
mesme, vncore le introduction & establissement del co-
mon ley D'engleterre ad abolish ceo. Car cē custome
de Tanistry fuit le common custome del tre de Ireland des
unle conquest & generalment ble en tous le Irish coun-
tries, en m le nature & forme come est trone icy. Et pur ceo
consent de nre licy estre abolish per le establissement de un
auter general ley en mesme le point.

Des q le Introduction del common ley D'engleterre en
cest royaume de Ireland, est asauoir, que siours cē Irland ne
fuit pleinement conquer & reduce al subiection de la corone
D'engleterre, tout al un temps, mes p parties & en several
ages & l'ent la commandy D'engleterre ne fuit compaigni-
cē a tous les inhabitants simul & souel, mais de temps
en temps, & al special persons, & families del Irishle, &
quand le roy fuit pleins de graunter la benefite protection
de ses lers, & al lers, & al lers, & al lers, & al lers, & al lers
hōm, & al lers, & al lers, & al lers, & al lers, & al lers
D'engleterre fuit establiss en Ireland, fuit general conte
de l'ent la Archibishop of London, 30. H. 3. paten. & l'ent la
de l'ent la forme. Quis prædicationem illis auxilium præstare
& pro vnitatē terrarum (note cē parol de vnion) prædicationem
est quod omnes leges & consuetudines que in regno Angliæ
tradiunt, in Hybernia reponantur, & eadem Theobaldus idem legi-
bus subiacet, & per eadem regantur, sicut Iohannes Rex com-
illuc

sin

G

illuc

Le Case de Tanistry.

illuc esset, statuit, & firmiter mandauit, ideo volumus, quod omnia brevia de communi Iure quæ currunt in Anglia, similiter currant in Hybernia sub nouo sigillo nostro, &c. in cuius rei &c. Teste me ipso apud Woodstock, &c. Coment que cõ ordonnance ou brieue del Roy soit generall, vncorpe est manifest per tous les auintient Recozds de cest Realme, que la common ley D'engleterre fuit solement mise en execution en cest part de Ireland, que fuit reduce & diuide en counties, & possesse per les English Colonies & nemp en les Irish counties ou territoires, que ne fueront reduce en counties, iusques al temps de Q. Mary, & Q. Elizabeth, & vncorpe fueront en exten de terre plus que 2. third parts de cest Irland.

Car le roy Iohn fesoit forsque 12. counties en Leymster, & Mounster viz. Dublin, Meth, Vriel, Kildare, Caterlagh, Killehny, Wexford, Waterford, Corke, Kery, Limeric, Typperry. Mes les autres prouinces & territoires de ce realme, que sont des diuide en 21. counties alarge, esteant donqs en habit. & le plus part, p. les merre Irish, fueront hors des limits de tout sbye ground, & le space de 300. ans apres le fessans de les primer 12. counties.

Et si ceo fuit impossible que la common ley D'engleterre puisset estre execute en ceus counties ou territoires. Car la ley ne poet estre mise en execution ou breue dominiegeis nos curie, & le bryet d'roy ne poet courger, mes on est cõsue & accoust, ou autres manieres de la ley, de seruer & retourner les brieses del roy.

Et par cest raulte apert per les antient Recozds, & mes les merre Irish fueront hors del protection del Roy. Car l'ins del Roy, & que la ley del Roy, & les bryes del Roy, & d'ors per quelq' home est protect & aide, & vint deuant le temps que home est hors del protection del Roy, & est hors de l'aire ou protect per la ley del Roy, ou per le bryet del Roy. Et que les merre Irish d'ors ne auoient le bryet de la ley D'engleterre, sans special charters del Roy de enablet eux, & ceus Recozds enuant, enfor antient, l'antient monstre.

(Hoc in 36. loraq. 53. 3301)
 2. Ed. 3. Clap. membr. 17. in Archiuis Turr. London. Rex dilecti & fideli suo Iohanni Darcy le Neveu Justitiero suo Hybernie salutē. Ex parte quorundam hominū de Hibernia

nia nobis extitit supplicatum, vt per statutum inde faciendum concedere, velimus, quod omnes Hybernici, qui voluerint legibus vtantur Anglicanis, ita quod necesse non habeant, super hoc, Chartas aliquas à nobis impetrare. Nos igitur certiorari volentes, si sine alieno præiudicio, præmissis annuere valeamus, vobis mandamus, quod voluntatem magnatū terræ illius, in proximo Parlamento nostro ibidem tenendo, super hoc cum diligentia perscrutari facias, & de eo quod inde inueneritis, vna cum vestro consilio & aduiscamēto, nos distinde & apperte cum celeritate, qua potestis, certificetis, hoc breue nostrum nobis remittentes, &c.

2 Inter communia placita. 28. Ed. 3. in Archiuis castri Dublin. Simon Neal quæritur de Willielmo Newlagh, de placit' quare vi & armis, apud Clandalkan in Comitatu Dublin, die lunæ proxime post festum sanctæ Margretæ virginis anno regni Regis nunc 28. Clausum ipsius Simonis fregit, & herbam suam ibidem cum bestiis suis, viz. afris, vitulis, & bidentibus conculcauit & consumpsit, contra pacem, &c. Vnde dicit quod deterioratus est, & damnum habet ad valentiam, 20. s. & inde producit sectam, &c.

Et prædictus Willielmus modo venit, & dicit, quod prædictus Simon est Hybernus, & non de Quinque sanguinibus, & petit iudicium, si ipse ei respondere teneatur.

Et prædictus Simon dicit, quod ipse est de Quinq; sanguinibus, viz. de les Oneyles de Vltonia, qui per concessionē progenitorum Domini Regis libertatibus Anglicis gaudere debent, & vtuntur, & p libris hominibus reputantur, & hoc offert verificare, &c.

Et prædictus Willielm dicit q ipse Simon est Hibernus, & nō est de les Oneyles de Vltonia nec de Quinq; sanguinibus, & de hoc &c. Ideo fiat inde iurata, &c.

Qui iurati dicunt sup Sacrament' suū, q prædictus Simon est de Natione des les Oneyles de Vltonia, & sic est de Quinque sanguinibus, &c. Et assidunt damna ad sex denarios, ideo consideratū est quod prædictus Simon recuperet versus prædictū Willielmū damna sua prædicta, & prædictus Willielmus committatur Gaalæ quousque, &c.

Per cest Judgement appiert, que fueront cinque principall septs ou sangues del Irishrie, enable per graunt del Roy, de auer le benefiste del ley D'engleterre, & appiert p

Le Case de Tanistry.

In auter record queux fueront les dits Cinque Septes ou
sangles.

3 3.E. 2. Inter placita coram domino Iustitiario, &c. in
Archiu. Turr. Bremingham in castro Dublin. Frater Phil^{us}
de Mōsterworth, & frater Richardus de Abbedley Canonici
de l'Anthony iuxta Glocester, Richardus Fox, & Willielmus
de Stowell attachiati fuerunt ad respondendū Willielmo O
Kelly de placito, quare, cum dominus Rex cepisset in prote-
ctionē suā specia^l prædictū Willielmū o Kelly, homines, terras,
tes, redditus, & omnes possessiones suas, inhibens omnibus &
singulis, ne quis ijs inferret, vel inferri permetteret iniuriā &c.
Ijdem Philippus, Richardus, Richardus, & Gulielmus, in ipsum
Willielmū o Kelly apud Dulceek, vi & armis insultū fecerunt,
ac ipsum ibidem forstallauerunt, ceperunt, & imprisonauerunt,
& alia enormia ei intulerunt ad damnum &c. & contra pacem
& protectionem domini Regis, &c.

Et prædictus Philippus, Richardus, Richardus, & Willielm^{us}
ven. & defendunt vim & iniuriam quando, &c. & dicunt quod
non tenentur prædicto Willielmo ad hoc breue respondere,
quia dicunt, quod prædictus Willielmus o Kelly est Hyberni-
cus, & non de sanguine aut progenie eorum, qui gaudeant lege
Anglicana; quoad breuia portanda, qui sunt *Oneil de Vltonia*
O Conoghor de Connacia, *O Brien de Thormonia*, *O Molaghlin de*
Midia, & *Mac Murghogh de Lagenia*, & petunt iudici-
um, &c.

Et prædictus Willielmus o Kelly dicit, quod reuera ipse est
Hybernicus, sed de progenie de *Oneil de Vltonia*, habens or-
tum suum de sexu Masculino eiusdem progeniei, & petit in-
stanter: iudiciū & prædictus, Philippus, Richardus, Richard^{us},
& Willielmus dicunt, quod idem Willielmus O Kelley ad-
mitti non debet ad dicendum quod sit de prædicta progenie
de *Oneil*, quia si effet de progenie illa, hoc appareret in eius
cognomine, quia tunc diceretur Willielmus *Onei*, & non
Willielmus O Kelly, & unde dicunt, quod ipse non est de
progenie de *Oneil*, &c. Et hoc parati sunt verificare, &c. Ideo
inquiratur per patriam. Et præceptum est vic. quod venire
faciat coram &c. à die Paschæ in 15. dies vbicunque, &c. duo-
decim, &c. qui nec &c. per quos &c. ad recognoscendū, &c.
Idem dies datus est partibus prædictis, &c. Postea ad diem illū
yenerunt præd^{icti} Philippus, Richardus, Richardus, & Williel-
mus,

Le Case de Tanistry.

39

mus, & prædict^{us} Willielmus O Kelley, primo, secundo, tertio, & quarto die solemniter vocatus non venit, &c.

Après cest temps viz. anno 40. Edw. 3. en le Parliament tenuz al Kilkenny devant Lionell Duke de Clarence, fuit enact, que nul compaternity, nuture des enfans, ou mariage soit fait enter les Anglois, ou auters estreant a la peace del Roy, oue les Irish, sur paine de vie et member, et coment que p^{er} meisme l'estatute de Kilkenny le Brehon Ley, que fuit le comun ley del Irishry, soit declare destre nul Ley mes un leud custome, vncore c^{on} ne fuit tout ousterist abolish enter les Irish, mes toutsolement defend & phibite destre vse enter ceuz queuz fueront de English race, et les Irish fueront lesse alarge, destre rule p^{er} leur barbarous customes come deuant.

Et ap^{res} le fesans de cest Statute de Kilkenny, en tous auters Statutes faiz en temps del seuerall Roys, iusqs al temps de Hen. 8. ou aucun mention est fait des troubles & guerres en cest Realme, les Englois sont appel Rebels, & les Irish sont appell Enemies.

Des apres le Act de 33. Henr. 8. cap. 1. p^{er} que est recite, que coment que le Roy D'engleterre p^{er} le nosme del Seignior de Ireland, auoit tout maner de royall power, et Jurisdiction en cest Terre, vncore p^{er} ceo que il fiad assume le nosme et stile del Roy, les Irish Inhabitants de cest Realme nauoent estre cy obedient al Roy D'engleterre, et les Leys come de droit ils deuoent estre: Pur que est enact, Que le Roy Henr. 8. les heires et successeurs seront a tous iours Roys de Ireland, & auoent le nosme, Style, et Title de Roy de cest Terre, oue tous honors, prerogatives, & dignities appartenant al State et Pautesse del Roy, come vnite et annex al Imperiall Crowne D'engleterre, &c. Apres le fesans de cest Act, le dit difference de English Rebels, et Irish Enemies, nest destre trouue de Record, mes tous les meir Irish fueront d'hoirs, enuait accept et repete subiects et liege homes a les roys et roynes D'engleterre, et auoent le benefite et protection de la Ley D'engleterre, quant ils violent vs^{er} ou demander ceo.

Et al entent que la Ley D'engleterre puilloit auer un free course in et p^{er} tout le Realme de Ireland (come est expresse

Le Case de Tanistry.

expresse en le Statut d'11. Eliz. cap. 9. fuit prouide en feuerall Parliaments, viz. 3. & 4. Phil. & Mar. cap. 3. & 11. El. cap. 9. que commissions serront agard, & reduit en Shires et Hundreds, tous les Irish countries que ne fueront Shire ground d'uant: et accordant a ceo en les feuerall gouernments de Thomas countee d'Sussex, Sir Henry Sidney, et Sir John Perrot, non soleint les Irish territories en les confines d'Leinster, mes auy les entir Prouinces d'Conaght et Ulster, esteat hors d'tout Shire ground d'uant, fuerot diuide et distinguib en feuerall counties et hundreds, et feuerall Iuriscounts, coroners, et iustices d'Peace, & aus officers et ministers de la Ley D'engleterre ont estre de temps en temps constitute en ceux counties, p' feuerall Patents & Commissions desouth le grand Seale d'Ireland: et p' cest mean la common Ley ad estre communicate a tous persons, et execute p' tout cest Realme p' plusors ans passees.

D'arrainment, nostre Seignior le Roy que oze est per un speciall Proclamation in Anno 3. de son reign. declare publiq, que il ad receiue tous les naties de cest Realme en son roiall protection, &c. Per que fuit eleerint resolu, que la common Ley D'engleterre est oze establi vniuersalment p' tout cest realme de Ireland, et q' tous persons et possessions deins cest realme doent estre gouerne p' les rules de cest ley, et q' chescun subiect inheritera son terre en Ireland, viz. p' le iust & honorable ley D'engleterre. En cest maland, p' mesme la ley, p' que le Roy enherit la coronie de Irer, et p' ceux degres, le common ley fuit introduce et establi en cest Realme.

Et quant al cest Terre en question, ceo gist en le county de Corke, que est un des auint counties fait per le Roy John, et en que le common Ley D'engleterre ad la course pur le space de 150. ans al meins apres le conquest. Per que, coment que per le incursion del Irishie le course del common Ley D'engleterre fuit interrupt & discontinue en cest countie per un long space de temps, vncoze l'execution del common ley, estant reuiue & restore, le custome de Tanistrie & tous autres Irish customes nient agreeable al rules del comon ley, sont aniers et abolib, come ils fuerot s' l'primer introduction d' la ley D'engleterre en cest countie.

Et

Et coment q cest custome de Tanistry ad estre custome de un particular lieto tantsolement, vncore estreant repugnant a les rules del common ley, serroit abolish per le introduction & establisshment del comon ley en cest Reaume : & nest semble al Case de Wales Dier 21. Eliz. 363. b. ou particular custome de Denbigh continue nient obstant le statute, q establissh le common ley en Wales : car l'entet d'iceles de cest statute appiert destt q les customs d'Wales agreeable al ascun customs d'Engleterre, sont pserue, car y mesme lestatut est prouide, q Commission issira de examiner les Welch customs, & que ceux que seront trouue reasonable, sur Certificate des Commissioners seront allowe.

Auxy cest custome ne poyt estre resemble al custome de Gavelkind en Kent que auoit continuant apres l'Norman Conquest : car l'common ley D'engleterre ne fuit introducee p le Conqueror, come ad estt obsue, & proue tresdoctint p le Seignior Coke, in le Preface al tierce part d les Reports.

Fuit auxy resolu, que rien passe p l'Grant de la Roynie Elizabeth fait al Conoghor O Calaghan, come t est trouue p l'Edict : car le graunt est fait en consideration d son surrender, & il ne claymoit eings mes come Tanist q ad nul estate dont la Common Ley prist notice, et issint son entrey fuit forsque abaterint apres le mort del Donogh mac Teig, le puisne, p que le Graunt del Roigne fait en consideration de teil estate surrendered, est voyd en Ley. Barwicks case, 5. part des Reports del Seignior Coke, 93. b. le case d'Alton Woods, 1. part des Reports del Seignior Coke, 43. b. 18. Eliz. Dyer 252.

Et quant al statut de 12. Elizab. cap. 5. pur accepting surrenders del Irish Seigniors, ceo ne fait le Graunt bon. Car cest Graunt ne fuit fait per force d ce Statut, ne accordant al forme pscribe en cest Statut. Car l'Statut requit d'iceles necessary circumstances, qz fuet omitt, en le obtayning et passing de cest Graunt. Car primerment, le pretended Irish Seignior doet offer de surrender, donques cest offer doet estre aduertise al Roigne, & sur ceo la Roynie doet signifier sa pleasure al Deputy, ou autre chiefe

Le Case de Tanistry.

chiefe Gouvernoz p les Letters ou instructions desouth la signature, que le Surrender sera accept, et grant fait al tiel pretended Seignior p Letters Patents. Et sur ceo, le Deputie et greinder part del councell de cest Realme doent faire warrant al Chancelloz q accept le Surrender, & passer les letters Patents accordant a tiel letter ou instructions. Ceux circonstances ne sont troue p le Adict desre obsue en le passing de cest grant, et p ceo ne sera entend desit fait p force de cest Statut, et p consequence ne fra fait bone et effectuell p ceo.

D Arrainment, ou fuit obiect p vn del Councell oue le Plaintife, que la Royne Eliz. sera dit en possession de cest terre, p vertue del pñmer conquest d Ireland, enuets Donogh mac Teig O Callaghan le feoffoz, que ne puis- soit deriuer aucun title al cest terre de la cozone, et p ceo, son feoffement p que le Defendant clame, fuit voyd, esteant fait per intrudoz sur le possession de la Royne: fuit resoluue encounter cest objection, que la Royne Eliz. ne sera dit en actuall possession de cest terre per vertue del pñmer Conquest, si ne appiert per aucun Record que le pñmer Conqueror ad seisse cest terre al temps del Conquest, & appropiate ceo particulairment a luy meisme, come parcel de ses proper demesnes.

Car les Roies D'engleterre ont toussoits clame & en deins leur Dominions, vn Monarchy Royall, & nemi vn Monarchy Seigniorall ou Tiranny. Et desouth vn Monarchy Roiall les subiects sont franch-homes, & ont property en leur biens, & franchtenement & enheritance en leur terres: mes desouth vn Monarchy Seigniorall ou Tiranny, ils sont tous come villesins ou esclaves, & proprietors de rien forsque a volunt de leur Grand Seignior ou Tyrant, come en Turkey & Moscouy. Et p ceo quant tel Monarch Royall que boet gouverner les subiects per vn iust & positif ley, ad fait nouell Conquest de vn Realme, coment que ipso facto il ad le Seignior p Parramount de tous les terres deins tel Realme, issint que tous les terres sont tenus de luy mediare vel immediate, & il ad ausi le possession de tous les terres queux il boet actualment seiser, & retainer en les proper mains, pur son profit ou plensure,

et poet auxy per les graunts distributer tiel portions que luy plerra, a les seruiteurs et gens de guerre, ou al tiels colonies queux il boile planter immediatemēt sur le Conquest: come les auintient Romaines, sur leur conquests, ont vse de appropriate le septiesme part del territoiry conquerē, pur plantation de leur colonies: et les Vandals in Italy prisoient le tierce part: vncore Sir James Ley chiefe Iustice disoit, que si tiel Conquerour receiue aucun de les natiues ou antient enhabitants en son protection, et auoto eux pur ses subiects, et permit eux de continuer leur possessions, et de mourir en son Peace et Allegiance, si leur heirs serront adiudge eings p bone title sans grant ou confirmation del Conqueror, et enioieront leur terres selonque les rules de la ley, que le Conqueror al alloto, ou establi: sans violent submitter eux mesmes a la ley que est alloto ou establi p le Conqueror, et tener leur tres accordāt al rules de ceo, et nēy auterint. Et sur cest reason, ou William le conquerour ad grant al Warren vn Norman de principall qualite, le castle de Shirbourne in Norfolk, le heir de Shirbourne le antient enheritoz de cest castle, monstre al Conqueror, que il fuit son subiect et liege home, et enheritoit le dit castle p mesme la ley que le Conqueror ad alloto et establi en Engleterre, et p ceo pria, que il poet tener le dit castle en peace: le Conqueror, en cest case dona Judgement p Shirbourne encounter Warren, de quel Judgement Camden fait mention en le descriptio de Norfolk, et Calthrop Justice disoit que il ad vieu vn authentique copy de cest Judgement en le Library de Sir Christopher Heydon al Baconsthorpe in Norfolk.

Car reuera le Norman Conquerour (coment que il fesoit plus absolute et entre Conquest d'engleterre, que Henr. 2. fesoit de Ireland) vncore il ne seist tout, ne auoit le actual possession de tous les terres deins le Realme d'engleterre best en luy per le Conquest, mes le contrarie appert per le liur de Domesday, que est exact description de tout le Realme, fait en temps de cest Roy. Car per cest record est manifest, que le Conquerour auoit certaine terres en demesne, viz. les terres queux fueront en la Main de Saint Edward et sont la entitle, Terra Edwardi Regis

Le Case de Tanistry.

Regis, & aufz ffrs, qur il m ad seisie sur le conqst, & sont en-
title Terræ Regis sans pluig, come ē note en 49.E.3.23.a.
Et ceuz ffrs sont oze appel les antient demesnes del roy,
ou le antient demesns de la cozone D'engleterre, F.N.B.14.
Mes en cē liuer les possessions des aufz ffrs sont expres
& mise en certain, cybien que les possessions del roy, & cettz
terres qur sont desouth auters titles, come Terræ Episcopi
de Excester, &c. Et tous aufz terres queux fueront en au-
ter maine, & nosmes en cest liuer, sont frankfee, 40. Ed. 3.
45. Fitz. N.B. 16.D.


Et pur ceo Bodin ne fuit bien infozme, quaut il escript,
libr. 6. de Republ. cap. 2. que Guiliaume le Conquerant apres
auoir conqueste la Roialme de Angleterre, declaira tout le pais
en general, & les heritages de chascun en particulier, aluy ac-
quis, & confisques per droit de guerre, traitant les Anglois
come ses Fermiers, &c.

Et issint est Renatus Choppinus deceiue en son liuer de
Domanio Franciæ ou il parlant de moderation vse p les an-
tient Ramans, & Lombards en leur coconqst, Quanto ini-
quius dît il Willielmus ille Britannicus, lata lege Agraria, se
omnium possessionum Dominum iactabat, vt non modo pri-
uatorum bona cencerentur, sed quicunque in futurum posside-
rer, graue annuū vectigal quasi nudus fructurius exuolueret, vt
a Polidoro traditum est. Mes nostre rerord de Domesday
est, en cest point, de melieur credit, que tous les fozein dis-
courses ou Chenicles de mounde.

Aurp le Roy Edw. 1. fesoit vn conquest de Dominion de
Wales, & changeoit leur leys & customes, come il ad
expresse en son Charter ou statute de Ruthland, ou il dît,
Digna providentia terram Walliæ cum incolis suis prius no-
bis iure feodali subiectam, in proprietatis nostre Dominium
totaliter & cum integritate conuertit, & Coronæ Regni no-
stre annexit, & quant a leur leys & customes il dît, quas-
dam illarum de consilio procerū regni nostri delevimus, quas-
dam permisimus, quasdam correximus, ac etiam quasdam alias
adijciendas & faciendas decreuimus, &c. Coment que cest
Roy ad donques gaine le propriety de cest Dominion, is-
sint que les inhabitants de ceo ount submitte euz mesmes
a son volunt de Alto & Basso, come est recite en mesme le
charter

42

Cest case dependoit en Bank le roy per le space de 3. ou 4. ans, & fuit argue plusoiz foits, & les Justices al seueral temps, ont deliuer leur opinions en les seueral points a uantdit. Mes apres, Sir Humfrey Winch estant chiefe Justice, les parties, oue conge del court, descendoent al agreeint, per que reasonable diuision fuit fait de cest territoire enter eul, en quel deuision le castle & terre en question, enter auters, fuit allot al Chair O' Callaghan le Defendant. Et oze, p'eter leur mutual assurances, ils ont obtaine seuerall graunts del Roy per vertue de commission pur strenghtning de defectue titles. Et issint cest councey bien settle. Bolton Recorder de Dublin & Jo. Meade furent a conseil oue le plaignife, & le Atturney generall oue le Defendant.


Pascha
 ...

plastic.

1. Die erste Gruppe ist die Gruppe der "Königlichen Beamten".
 2. Die zweite Gruppe ist die Gruppe der "Königlichen Beamten".
 3. Die dritte Gruppe ist die Gruppe der "Königlichen Beamten".
 4. Die vierte Gruppe ist die Gruppe der "Königlichen Beamten".
 5. Die fünfte Gruppe ist die Gruppe der "Königlichen Beamten".
 6. Die sechste Gruppe ist die Gruppe der "Königlichen Beamten".
 7. Die siebte Gruppe ist die Gruppe der "Königlichen Beamten".
 8. Die achte Gruppe ist die Gruppe der "Königlichen Beamten".
 9. Die neunte Gruppe ist die Gruppe der "Königlichen Beamten".
 10. Die zehnte Gruppe ist die Gruppe der "Königlichen Beamten".

Paschæ 5. Iacobi.

En banke le Roy.

Le cas del Deane & Chap. de Fernes, siue,
Del Capitalariter Congregatis.

EN Electione firma post per Richard Pe-
meton plaintif bers Iohn Allen del dit
special verdict troue, le cas en substance
fuit tiel.

Le Deanry d Fernes que est Donative
per le roy, & nemy Eleciue, estant void,
la roigne Eliz. anno 20. de sa raigne, dōc
ce dit Deanry per letters patents al Walter Turnor
clerke, sans limitation del ascun estate pur vie, ou auter-
ment.

Après Turnor est depziue per sentence del Hugh Allen
adonques Cuesque de Fernes, pur cest cause, viz. pur ceo
que le dit Turnor fuit meere lay home & nient capable d tiel
dignitie.

Après ceo la Roigne Eliz. anno 26. de sa raigne, done &
grant mesme le Deanry al un Champion durant son vie.
Puis, le dit Cuesque de Fernes fist lease del Mannor de
Fiddert en le county de Northford estant parcel del tem-
porall possessions del dit Cuesquerie, al Iohn Allen le de-
fendant: quel lease fuit confirme per le Deane & Chapter
de Fernes, en cest mannor, viz. le Chapter adonques con-
sistoit de 11. persong en number, viz. le Deane & 10. pre-
bends

bends, Turnor & Champion esteant ambideux en pleine vie, Champion fist un Gray, esteant en meere lay home, son proctor ou substitute p doner son assent al tous leasages & grats, &c. Cest proctor & 3. des Prebends tant u conuenont ensemble, & fixont le Chapter seale al confirmation de cest lease, quel confirmation fuit fait en le nomme del Deane & chapter. Apres ceo, 3. autres des prebends al seueral iourz chescun aperluy, subscribont leur nommes al dit confirmation. Puis, le Euesque que fesoit le lease mozt, & Thomas Ram est fait Euesque de Fernes, que enter sur le def. & fait leas al plaintife. Et si le prier leas fait al defendant soit bien confirme p le Deane & chapter, ou soit void pur fault de bone confirmation, fuit le question. Et fuit adiudge que le leas fuit void apres le mozt del Euesque q fesoit ceo, pur fault d bone confirmation del deane & chapter.

Et en cest case 3. pointz fueront moue & debate.

1 Si le donation del Deanry fait p la Roigne Eliz. al Turnor sanz limitation del ascun estate, soit void, ou quel estate il auera.

2 Admit, q le Deanry soit bien grant al Turnor sanz limitac d estate, si le sentence d deprivation fait luy nul dean issint q le Deanry esteant void p ceo, le donation fuit al Champion serroit bone.

3 Admit, q Champion fuit total deane al temps del confirmation fait, si le Deane & le greinder part del chapter ont bieu & confirme cest leas, ou nemy.

Et pmerint fuit obiet p le counsell del defendant, que le grat d le Deanry p la roigne Eliz. al Turnor sanz limitation del estate, fuit void tout oustermet pur le incertainty del grant: car le intent de la roigne nest expres en certaine, il auera le Deanry p vie, a volunt, ou autermt. Come si roy grant terre al I.S. habendum a luy & ses heirs males, sanz dire, de son cozps, le habendu ou limitation de le estate en ce grant esteant void pur le incertainty, tout le grant est tenuz void a tous entents, issint que le grantee ne serra tenant a volunt le roy, Alton Woods case in le 1. part des Reports de le seignior Coke, fol. 43. b. & 49. a. 18. H. 8. B1. Patents 104. le seignior Louels case.

¶

¶

Le case del Deane & Chap. de Fernes,

Mes admit, que le grant ne fuit ousterment void, le me-
lior estate que passa per ceo, fuit forsque a volunt del roine,
come appiert per le liuer de 17. Ed. 3. fol. 45. q̄ est authoritzé
direct en le point. Car la, sc̄it facias fuit port vers vn Deane
del frank chappel del roy. De auer execution del annuitie
recoier vers son predecessor: Thorp, nous nous diomus q̄
le roy per son charter, que cy est, a nous dona le Deanrie,
& en la charter nest pas termine, coment, & come longesit a
tener. issint que ceo ne poet estre entend forsque a volunt
le roy: Judgement, si le bziese gise vers nous, R. Th. il ne
clame nule estate en certainty, & ne dit pas cause pur que le
bziese ne giroit vers luy, judgemēt, & p̄omus execution.
Tho. Si auter person face tiel fait, & done en non certaine,
certum est que fanketenemēt passa, mes quant al roy, il nest
pas issint, car si il done terre ou tenement per le maner il
nauera forsque a volunt.

Accordant a cest opinion de Thorp, fuit tenus par ley in
Camera Stellara 1. Mar. Dier 100. a. que si la roigne per sa
charter grant terre probis hominibus villæ de Islington, sans
dire, habendum, eijs hæredibus vel successoribus suis, rendant
rent que ceo est bone corporation a cest entent, mes que ils
ne sont forsque tenants a volunt del terre, Vide 5. E. 4. 8. b.
le case del Garter roy des Heraulds, ou cest office fuit grant
al vn sans limitation dī estate, & est tenus que il fuit officer
a volunt del roy.

Donques si Turnor fuit Deane forsque a volunt del
roigne, el ad determin sa volunt, p sa second grant fait al
Campion, p̄ ceo que cest second graunt fuit a comunecer in
presenti: & ne besoigne de signifier le determination de sa
volunt p̄ expresse parols, come est tenus, 1. & 2. P. & M. Dier
107. in le case del Almoner, & en le case de Alton Woods cite
deuant fol. 30. a. Et ceo appiert auxy per le judgemēt del
Parliament en le Act de 6. H. 8. cap. 15. que p̄ouide, que le
second patent recitera le p̄mier patent fait per la Roigne
durante beneplacito, autrement le p̄mier ne serroit void,
come fuit per la ley de uant le fessans del dit act, Mes cest
Act nest en force icy.

Second-

S Econdment, fuit obiect, que admit que le graunt fait al Turnor serroit bone durât son vie, vncore il fuit depzue p le sentence del Euesque, pur q le Deanry denaignoit void deuant le second grant fait al Campion : q l sentence de Depzuation, comt, que le Deanry soit Donatiue p letters patents del roy, nest void, mes estoit en force tanque soit reuers p appeal. Car vn Deanry est spiritual dignity, come est tenus en Goodmans case, 10. Eliz. Dier 273. Et le Euesque p common entendist ad Ordinary jurisdiction sur tous Ecclesiasticall causes deins son Diocesse, & comt q il ad commit contempt en visiting le Donatiue del roy, & en donant le sentence del depzuation, come Barlow Euesq de Bath encurreoit le penalty de pramunire en teill case. Brooke Præmunire 21. vncore la sentence nest void. Et a cest entent est le difference prise p Parning 13. Ass. p. 2. que si home ad nosme de dignity, & soit ouste p celui, que ad colour de luy ouster de sa dignity, come per Ordinary, mesq ceo soit p depzuation nient due, la il couient suer de auer restitution de sa dignity, deuant que il poet suer p cest nosme, aliter est sil soit ouste per auter. Et accordant a ceo, est le opinion de Herle & Scroope 8. Ass. p. 21. vide auxy case de Vere & Ieffreyes en le 5. part des Repozts de le Seignior Coke fol. 30. a.

Tercement fuit obiect, que le confirmation fait en teill manniere come est troue per le verdict est assés bone. Car primerment le Deane poet bien doner son assent, & fixer le seale del Chapter p Doctor ou substitute, & serra cy auayable, come s il ad estre personallly present. Qui per alium facit, per seipsum facere videtur. Et issint les Barons en Parliament donont leur assent p leur Proxies. Et coment que cest very point soit fait vn question 3. & 4. Philip. & Mar. Dier 145. b. ou Euesque ad graunt fee farme de terre que il en droit de son Euesquery, & confirmation fuit fait per Decanum & Capiculum, absente Decano in remotis, sed presente Presidente Decani, quem per simplex verbum Decanus constituit suum locum tenentem, & tradidit ei claues suas, vna cum voce & autoritate Decani, & hoc intratur in registro iuxta antiquam consuetudinem. Si le Successor poet auoider cest graunt, fuit mouz coram iusticiariis

Le case del Deane & Chap. de Fernes,

eiarijs, &c. Coment que leur resolution en cest point ne appiert, vncoze appiert que fuit un auintient custome que le Deane puilloit faire vn substitute en tielx cases, & si tiel custome ad estre vble, les acts fait per tiel substitute seront bone & auailleable en ley, pur le reason mise en le case de Corporations, en le 4. part des Reports de le seignior Coke fol. 77. b.

Auxy le confirmation est assets bone, coment que les particular pzebends, queux fesoient le greinder part del chapter, ont done leur assents al seuerall iours. Car sicome en fesans de leur common acts ils ne sont lies al ascū lieu certaine, come a leur Chapter house, car chescun lieu en queux ils voilont assembler pur faire leur common acts, est bone Chapter-house, 21. Ed. 2. 6. 9. Ed. 4. 39. 14. Henr. 6. 16. Munt ils ne sont lyes al ascun temps certaine pur doner leur consents. Mes si leur consent appiert p tiel demonstration que la ley requiere, cest sufficient. Et quel demonstration est ceo & certes, le fixing de leur Common Seale, 14. H. 6. 17. 2. car la est dit, que le fixing dl Seale monstre leur agreeint, & la Paston dit, coment poet leur assent estre mieux proue, que p le ensealer de leur common seale, Vide 4. E. 2. firz. Obligation 16. Et comēt que ils expressent leur assents al seuerall iours, p parol, ou signature, vñ le fixing del seale vnite les seuerall assents, & fait vn ioynt assent de tous.

Et le fait de vn Corporation ne besoigne deliuerp, come le fait de vn natural per son, mes le apposition del common seale, done perfection a ceo toleint. Auxy en plusors cases assent apres vn act fait donera force a ceo, come Attournement done force al grant de reuerston fait deuant, & si disteissin soit fait al vñ de I. S. sō agreeint apres, faira luy disteissin, sicome il ad estre present al temps del comitting de I. d. disteissin, 37. Aff. p. 8. 38. Aff. p. 9.

MEs de auter part, fuit respond per le Counsell del plaitnife, & resolu per le court, pñmerment, que le done ou graunt de le Deanry de Fernes fait per la roigne Eliz. al Turnor sans limitation de ascun estate en ceo, fuit bone, & que il ad cy large estate en cest Deanrie per cest graunt, come ascun Deane que est Electiue poet auer

auer en son Deanry que il ad per election.

Et pur cleering de cest point 3. diuersities fueront prise: vn surdont sur le difference des Personz queux sont grauntoz, auter, hozs del diuers quality dez choses granted, & le tierce del different capacities en queux lez grauntees poent prendre les choses.

1 Pur le pziemer difference: si common person graunt rent, ou auter chose que gist en graunt tantum, sans limitation del ascun estate, per deliuerie del fait tantum franchement passa 17. Edw. 3. 45. a. Et le reason est, pur ceo que le graunt del common person serra prise plus foiz enuers le graunter 7. Ass. p. 1. Mes si le Roy graunt Rent ou terre sans limitation del ascun estate, le graunt est meerement void pur le incerteinty, & le grantee ne serra tenant a volunt al Roy, come est rule en le Case De Altonwoods cite deuant: & la reason est, pur ceo que le graunt del Roy serra pris plus foiz pur son benefice & aduantage, & si poet estre prise a double entent: serra adiudge void pur le doubtfullness de ceo. Et cest diuersity surd sur le difference des personz quent sont grantoz.

2 Le difference que result hozs de diuers quality Des choses graunted, est tiel.

Si le chose grant soit de tel nature, issint que diuers estates poent estre limit de ceo, come de tere, Seignioz, rent, & huiusmodi, si le Roy en son graunt de tiel chose ne limite ascun certein estate al grauntee, rien passera per cest graunt, mes serra adiudge meerement void pur le incerteinty, come est monstre deuant: Mes si le chose granted soit tiel dont diuers estates ne poet estre limited, mes vn estate tantum est incident a ceo, que la ley limite, sans ascun limitation fait per le grauntoz. de tiel chose le graunt del Roy ne poet estre doubtfull, ou incertain; le Roy ne poet estre deceaue, ne poet erre, car Error est in bivio, & nul erroz poet estre, ou est forsque vn boy destre prise.

Mes quel chose est ceo a que vn estate tantum est incident per la ley, & de que diuers estates ne poet estre limit. Certes, ceo est vn office. Mes quel office? Certes, tiel office, que per la ley courge en perpetuall succession, & nemy en course de discent, & dont le officer est touz fois

Le case del Deane & Chap. de Fernes,

corps politique : et de cest nature, sont tous Offices Ecclesiasticall, Grendons case, Plow. Comment. 497.a. Car d'uns secular offices seuerall estates poent estre limit, come des offices d'Constable Dengleff, Marshal, Viscont, Gardein del fleet, &c. queux poent estre grant en fee, en taile p' vie, ou a volunt. Et la reason est, p' q' tiels tempozal officers ont leur offices en leur natural capacities, & l'Roy en policie poet suppreller, & reuiner ceux offices pro loco & tempore, & p' consequence poet limit tempozarie estates en ceux.

Mes Ecclesiasticall offices come Cuesquery, Deanrie, Rectorie, q'x sont institute p' le gournement d' la Saint Eglise, besoigne estre continue in course d' ppetual succession, vsque ad finem seculi : Et p' c' nul home poet pnd' tiel office en son naturall capacite, mes chescun tiel Ecclesiasticall offic' est corps politique ipso facto, come Person est incorporeate p' l' commun ley, 40. Edw. 3. 27. Et issint e Cuesque, et Dean, &c. & tous ceux ont leur offices en politique capacity, & en course d' succession, & ceux sont les offices d'ot la Ley d'min' un estat etain, & dont disuilty des estates ne poet estre limit.

3 Et issint le tierce difference appiert, viz. ceo que surd hors del diuers capacities des Grantees. Car Grauntee del tempozall office, come del office de Constable ou Marshal, poet prendre ceo en son naturall capacity, & son heire poet prend' ceo en course d' discent, si estate d'inheritance soit limit d' ceo. mes Grauntee d' spiritual office, viz. d' Cuesquery, ou Doury, &c. ne poet e pnd' en natural capacity, si en course d' discent, mes en politique capacity, & en course d' succession solement, car auter estate il ne poet auer en ceo, ne auter estate poet estre limit de ceo. Cuesque ne poet auer estat a volunt, pur ans, ou pur vie, ou en taile en son Cuesquery, ne Deane poet auer aucun tiel particular estate en son Deanry, mes ils ont estate en fee al meins : mes ceo nest a eux & leur heires, mes solement a eux & leur successors.

Pur cest reason, quant le Roy graunt & done Cuesquerie (car tous Cuesqueries en cest Realme sont done et graunt p' Letters Patents p' l'estatute de 2. Eliz. cap. 14.) ne besoign aucun limitation del estate en le donation, nient plus

Le Case del Deane & Chap. de Fernes,

2 **Q**uant al second obiection, viz. Que Turnor fuit depzue p sentence del Cuesq, q̄l sentēce ne fuit vnq̄s reuerse p Appeale, et issint le Deanry fuit boyd, quant le grant fuit fait al Champion, p q̄ Champion fuit loiall Deane, quamt le lease en q̄stion fuyt confirme, fuit forment argue p le Councell del Plain-tife, que le sentence de depzuation fuit tout ousterint void, & que Turnor remainoit Deane nient obstant cest Sentence.

Car cest Deanry est donatiue p Letters Patent s̄l roy, nient visitable p l Cuesq, & p consequence hoz s̄ son Jurisdiction, & issint le sentence del depzuation est void, estant Coram non Iudice. Come Judgmt s̄ franch fee en court de antient Demesne, 11. Henr. 4. 17. Judgmt done en le Marshallie sur contract fait hoz s̄ del Tierge, & ou nul des parties est del hostell del Roy, & Judgmt en le court s̄l Admiraltie, De re facta in corpore Comitatus, 19. Ed. 4. 8. 20. Edw. 4. 15. Et Judgmt done en le comun Bank sur ap=peale s̄ Murder port la 22. Edw. 4. 33. tiels Judgments sont void ou les Judges nont Jurisdiction in tiels causes: p q̄ cest sentence fuit void en cest case icy, p̄ q̄ cē Deancie este=ant vn Donatiue s̄l Roy est exempt & hoz s̄ s̄l jurisdiction del Cuesque.

Car l Ordinary nad rien a Medler oue vn Donatiue que doet passer per done de la Parson sans institution ou induction come est dit, 8. Affisar. pl 31. Et q̄ ls Donatiues del Roy sont hoz s̄ del Jurisdiction del Ordinary, & nient visitable p luy; Vide 20. Edw. 3. Fitz. Excomm. 9. 16. Ed. 3. Fitz. Brief. 660. 21. Edw. 3. 60. 6. Henr. 7. 14. Cawdreys Case, en le 3 part des Reports de le Seignior Coke, fol. 15. a. Mes le visitation de tous Donatiues del Roy appent propmt al Seignior Chauncellor del Realme, N. Br. 42. a. ou auant le Roy poert faire speciall Commission a cē purpose, 6. Henr. 4. 14. & Goodman's Case, 10. Elizab. Dier 273. ou l Cuesque s̄ Bath & Wells ad especiall Commission agard a luy p l Roy Edw. 6. de visiter le Deane & Chapter de Wells, p force de quel auctorite Goodman fuit depzue. Mes en cest case l Cuesque de Fernes ad nul Commission de visiter le Deane, & pur ceo coment que il ad com=mit

mit contempt enuers le roigne, pur que il fuit punissable, vncoze esteant vn nullity en le sentence de Depriuation, ceo ne greuera le Deane, nient plus que vn Judgement al common ley esteant done Coram non Iudice greuera le partie vers que tiel iudgement est done. Et le reason del iudgement en Vere & Ieffreyes case semble destre vn rule de cest point. Car la est tenus, que si Ordinarie de vn Diocesse committe administration de biens de vn intestate que ad bona notabilia en diuers Diocesses, tiel administration est meurement boyde, cibien quant al biens deins son Diocesse, com alioz: pur ceo que per nul meane il poet auer iurisdiction del cause. Assint en cest case le sentence de depriuation est meurement void, pur ceo q le Euesque come ordinary poet p nul mean auer iurisdiction sur le donatue del roy, que est exempt de son iurisdiction tout ousterment per la ley.

Mes quant a cest point Ley chiefe Justice hastrait, & fuit plus tost de opinion q le sentence de depriuation fuit effectual en ley tanque fuit reuerse p appeale. Et sur Vere & Ieffreyes case il prist difference, entre Ministeriall act & Iudiciall. Et Committal de administration nest q Ministeriall act, & si ceo serra void en le case auantdit, mes depriuation est Iudiciall act que ne serra void forsque p autre iudgement sur appeale. Auxy ou Firz. N. B. 43. 2. dit q prohibition serra direct al ordinary q il ne bistera les donatues del roy, ceo prouue que le Ecclesiasticall court ad iurisdiction en causes de mesme le nature, & issint ad colour de proceder al sentence, & si prohibition ne vient deuant le sentence, ceo estoiera, tanque soit ad nul sur appeal.

MEs quant al tierce point, fuit resolu p tout le court, que coment que Turnor ad estre bien depriue, & Campion ad estre loiall Deane al temps de confirmation fait vncoze le leas fait al def, ne fuit bien confirme, ne p le Deane, ne p le greinder part del chapter, come deuoit estre per la ley, en tiel case.

Primerment nul confirmation fuit fait per le Deane, Car il ad fait vn Proctor que fuit meurement estrange al Chapter, & nient capable de tiel pcuracion, & pur ceo tout

Le Case del Deane & Chap. de Fernes,

tout que il ad fait ist void, p le rule Cnon ley & per le rule del del Cannon ley. Le rule del Cannon ley en cest case est. Absens non potest demandare vorum suum nisi vni de capitulo. Instit. Iuris Can. lib. 1. cap. Electionibus. Et est auter rule. Oportet quod procurator semper institutus sit de collegio. Et auter, Vorum dari non potest per literas.

Le rule del common ley est agreeable al Cannon ley en cest point. Car en le hault Court de Parliament, come ad estre dit deuant, les Barons poent doner leur votes per procuracy ou proxie. Mes leur proctor couient estre Barons, & members de mesme le meason, car estranger nest capable de tiel proxie. Mes ou corporation passera aucun interest, le common ley ne boet suffer q les members del corporation doneront leur assent p proctors ou substitutes. Et p ceo 11 H. 4. fol. 64. Sur composition p Dismes, un person grant annuity al Abbe de Battell, quel grant est confirmee p Euesque, Deane, & Chapter esteant Patrons. Et il appiere per le fait del confirmation, que le Deane fuit absent, & ne mist le seale a ceo, mes l'chantoz fuit son commissaire & misoit le Seale p luy. Et la est tenus, que comēt que le Deane poet auer un President ou Commissary, p exerciser son spirituell Jurisdiction, yncore tiel commissary ne poet charger les possessions del eglise. Et issint le question moue en 3. & 4. Philip. & Mar. Dier 145. Cite deuant, est resoluē per le rule de cest liuer.

Secondint, le maior part del chapter nont done leur consent al cest confirmation. Car le entier chapr consistoit de 11 persons, & 3. de eux tantum oue le proctor del deane fueront present quant le seale fuit affix al cest confirmaz. Et que le maior part del corporation doent consentir al tous acts queux lieront le corporation, est manifest auz per rules les del canon & Common ley.

Le rule del canon ley appiert en Panormit. cap. cum in canonicis, ou est dit, que *Authoritas & potestas capituli consistit in maiori parte ei & saniori, & sic totū capitulū facere dicuntur, quod facit maior & sanior pars. Et hoc verum est in omnibus actionibus & electionibus, praterquam in electione Romani Pontificis, vbi oportet quod duæ partes consentiant.*

Le common ley ad mesme le rule 14. Henr. 8. 29. ou est dit,

*D. 20. 21. q. bien fait, l. drame
sont remise. alius p. p. fent.*

dit, que le Deane & le maior part del Chapter font le coꝝ-
pozation, & leur act est le act del coꝝpozation, coment que
les auters ne agreeont. *Assint* 21. Edw. 4. 27. est dit, vbi
maior pars ibi tota 15. Edw. 4. 2. a. 9. Henr. 6. 32. a mesme le
entent.

Et cest difference fuit prise, viz. que en colleges & coꝝpo-
rations le maior part des members doent doner leur voi-
ces in numero distincto : mes en confused & incertaine num-
bers, come en election de chivalers al Parliement, ou de
coꝝoners ou iuderoꝝ en le countꝝ de court, le greind voice
ou acclamation est sufficient, pur monstꝛer le assent del
greinder part des freeholders queux font le election. *Plo.*
Comment. 126. a. Et sicome le maior part dī Chapter doet
consentir en fensans de cest confirmation, & cest consent doet
estre expresse p le fixing del Seale, come est tenuz 14. H. 6.
17. *Assint* ils doent ceo faire en vn lieu & al vn temps, car
auterment poet estre dit assensus, mes nemy consensus, ou le
leas doet estre consens cum assensu & consensu del deane &
chapter. Car sicome vn coꝝps naturall ne poet faire ascēsi
perfect act si soit dismembꝛe, viz. si le test soit en lieu, & les
maines en auter lieu, & sic de ceteris, assint est de coꝝps po-
litique, les persons queux sont members de ceo doent estre
capitulariter congregati en vn lieu certaine, auterment, si ils
sont scatter & disperse en seueral lieues, ceo que ils font ne
serra dit le act del coꝝpozation mes serra dit factum singu-
lorum. Et pur *panormitan.* dit, Vniuersitas vel corporatio
non dicitur aliquid facere, nisi id sit collegialiter deliberatum,
etiam si maior pars id faciat. Vide 15. Ed. 4. 2. a. ou le maior
part des moignes ont subscribe leur nosmes al vn fait del
Abbe mes ne fuit expresse que ceo fuit fait oue assent & con-
sent del couent, ceo serra dit destre fait per les particular
persons queux ont subscribe, & nemy per le coꝝpozation, &
tel fait ne liera le meason.

Uncoꝛe fuit agreee come ad estre dit deuant, que le deane
& chapter ne sont confine a leur chapter-houle, mes que
ils poent assembler, & faire leur acts alioꝝs. Et pur ceo est
tenuz 21. Edw. 4. 26. que ou fait pozt date in domo capitu-
lari, auerment poet estre, que cest fait fuit deliuer en au-
ter lieu. Et a cest entent est 27. Ass. p. 23. le case de *Winton*
Assent.

Le Case del Deane & Chap. de Fernes,

Alien. Vncoze il couient que ils s'assemblont en ascū certain lieu, & que le maior part soit present en cest lieu quant ils donont leur consent al ascun common Act. Et pur ceo le election des Coroners doet estre fait in pleno comitatu come appiert per le bryefe de Coronatore eligendo? Quia nuper vnus coronatorum in comitatu tuo diem clausit extremum, &c. Tibi præcipimus, quod si ita sit, tunc in pleno comitatu tuo de assensu eiusdem comitatus elegi facias, &c. vide Registr 177.a.

Auxy le consent del maior part del chapter doet estre done al vn temps, simul & semel, & nemy scattringly, & al seuerall iours. Car nest Consensus si ne soit simul. Car consensus est voluntas multorum ad quos res prinet, simul iuncta. Et pur ceo Panormit.ca.cum in Ecclesia dit, si consentiant vt singuli & non collegialiter, cum actus per communem consensum debeat expediri, non valet. Et en institut. Iuris Canon lib 1. cap. de electionibus est dit en le glosse Electio quæ à principio fuit nulla, quia facta a minori parte capituli, non potest conualidari per consensus particulares superuenientes.

Agreeable a cē rule est le reason del case mise en le Doct. & Stud. Br. Iudgements 148. que si feme suffer recouery de sa ioynture encouter le statut de 11.H.7. sans le assent bl cesty en reuerfion, & apres cesty en reuerfion releas al recoueroz p fine, cest assent vient trop tard, & ne boet faire le recouery bone, q fuit vn foits void. Ilint en cest case, quant le fait del confirmation ad le chapter Seale fixe a ceo, dōques ceo fuit void pur fault del consent del maior part del chapter, & p ceo p le straggling assents de 3. autres prebends done apres, ne serra fait bone, ou fuit void deuant.

Et sur cest derraine point principalement, apres plusors arguments, le court donoit Iudgement per le plaintiff. Et per cē Iudgement l' Euesque de Fernes recoueroit vn maison pur son habitation, ou deuant tous les mannozs & mansions del Euesquery esteant alien p les predeceslozs il nauoit, vbi reclinaret caput suum. Le Atturney General, & Bolton Becorder de Dublin fueront a counsell oue le pl, & le Solliciter General, & Io. Meade bl Wille Temple oue le defendant,

Hill

Hillar 3. Jacobi.

Le Resolution des Iustices touchant le
Irish Custome de Gauelkind.

Primement est ascauoir, que les terres
possesse par les meere Irish deins cest
realme, fueront diuise en feuerall terri-
toires ou countrees : & les enhabitatez
de chescun Irish country, fueront diuise
en feuerall septs ou linages.

Secondist, en chescun Irish territoz
fuit un seignior ou chiefetaine, & un Tanist que fuit son suc-
cessor apparcant. Et de chescun Irish Sepr ou linage fuit auxy
un chief, & fuit appell Canfinny, ou caput cognationis.

Tiercement, tous les possessions deins ceste Irish ter-
ritoires & countrees, que le comun ley D'engleterre fuit establi
en tout le realme, ebe oze est) engeont toutsois, ou en courte
de Tanistry, ou en courte de Gauelkind. Chescun seignior
ou chief, ou le portion de terre que posside ou ceo, aloit
sans partition al Tanist, que toutsois le seignior eia per
election, ou soit maine, & nemy per descent. Apres tout les
inheritoz & tenancies fueront partible enter les males, en
Gauelkind.

Uncoze le estate que le seignior auoit en le chief, ou
les inheritoz tenant & auent en Gauelkind, ne fuit estate de
enheritance, ne s'en temporay, ou transitoire possession.
Car comme le prochain heir del seign ou chiefetaine, ne en-
heriteroit le chief, mes le plus eigne & plus digne de Sepr
(come

Le Irish Custome.

(comme est monstre deuant en le case de Tanistry) que soient-
foit s'ait renoué a appel y en auer que fuit plus acrimo-
foit que luy: Ilint les freres de nature de Gauekind ne pou-
ront possible enter les prochains heres males del ceste que
mozt se fise, mais enter tous les males de son Sept, en ce
manner.

Le Canfinny ou chiefe de Sept (que fuit communement le
plus antient del Sept) fesoit tous les partitions y son dis-
cretion. Cest Canfinny, apres le mozt de chescun tertepant
que auoit competent portion de terre, assembloit tout le
Sept, & aiant mis tous leur possessions en Hotchpotch fe-
soit nouel partition de tout: En quel partition il ne assig-
noit a les freres de ceste que mozt, le portion que leur pere
auoit, mes il allottoit al chescun del Sept, selonque son an-
tiquity, le meilleur ou greinder purparty.

Ces portions ou purparties ilint esleant allotte & as-
signe, fueront possesse & enioy accordant, tantque nouel
partition fuit fait, que al discretion au volent del Canfinny
pouoit estre fait sur le mozt del chescun inferior tenant.
Et ilint per reason de ceuz frequent partitions & remou-
bentes ou translations des tenants del un pozt al autre,
tous les possessions fueront incertaine, & le incertaine-
ty des possessions fuit la very cause que nul civil habitati-
ons fueront erected, nul enclosure ou improuement fuit fais
des terres, en les Irish cuntries ou cest custome de Ga-
uekind fuit en vte. Specialment en Ulster, qui sembloit per
tout desher un holdernelle, deuant cest nouel plantation fais
per les English undertakers la. Et ceo fuit le fruit de cest
Irish Gauekind.

Sur y cest Irish custome de Gauekind les Bastards au-
uoient leur purparties ou les legitime, les fumes fuerent
tout dussent excludre de Dower, & les filles ne fuerent in-
heritables, comment que leur pere mozt sans issue male.
Ilint que cest custome differoit del custome de Gauekind
en Kent en 4. points.

Car. 1. y le custome de Kent le terre del nature & tenens
de Gauekind est partible enter les prochains hys males an-
cien & tiels coperteners apres partition auoient certaine es-
tate de enheritance en leur purparties.

Les

Les bastards ne sont admit denherit ouleht auelsq
les sirs legitimate.

La femme de chesci tertenant en Gavelkind e endoto-
able del moitie.

4 Pour default des males l's h's females inheriterot,
Vide Lamb. in le Peramb. de Kent. fol. 570.

Et p ceo cest custome de Gavelkind vse in Kent ad estre
toutfoirs allow & approue pur bone & loiall custome p la
ley Dengleterre.

Mes ce Irish custome de Gavelkind fuit agreable en
plusors de ceux points al custome de Gavelkind que fuit
en vse en North Gales: ql custome fuit reppone & refozish
per le statute de Rutland fait 12. Ed. 1. Car la est dit, Quia
hactenus mulieres non extiterant dotatæ in Wallia; Rex con-
cedit quod dotentur. Et apres e est dit, q aliter vsitatũ est in
Wallia, quam in Anglia, quoad successionẽ hereditatis, eo qd
hereditas partibilis est inter heredes masculos, & a tempore
cuius non extiterit memoria, partibilis extitit: Dominus Rex
non vult, quod consuetudo illa penitus abrogetur, sed qd hære-
ditas remaneat partibiles inter consimiles heredes, sicut esse
consueuerunt, hoc excepto, quod bastardi non habeant de ca-
tero hereditates, ac etiam quod non habeant propartes cum
legitimis, nec sine legitimis. Et si forte hereditas aliqua ex-
tunc, pro defectu heredis masculi, descendat ad legitimas mu-
lieres heredes vltimi antecessoris sui inde seifiti, volumus de
gratia nostra speciali quod eodem modo mulieres legi-
timæ habeant propartes suas sibi inde in Curia nostra assignan-
das: licet hoc sit contra consuetudinem Wallensicam ante v-
sitatam. Vide le statute de 34. H. 8. cap. 28. Rastal Wales 32.
ou le custome de Gavelkind en Wales est tout ousterment
abolish. oue diuers auters vsages semblable al auters cu-
stomes des Irish.

Pour ceux raisons, & pur e que tous les dits Irish costi-
tries, & les inhabitants d'yeux de hoys en auant fueront
desire gouerne per les rules de la common ley Dengleterre,
fuit resoluẽ & declare p tous les Justices, que le dit Irish
custome de Gavelkind fuit void en ley, non solehit pur len-
conuenience & breasonableness de ceo, mes pur ceo q fuit
un meere personal custome & ne pouloit alter le discent de
enheritance.

I 2

Et

Le Irish Custome.

Et pur ceo tous les terres en ceur Irish countrees seront oze adiudge de discender accordant al course de common ley, & que les femes serront endow, & les filles serront enheritables de ceur terres, nient obstant cest Irish blage ou custome.

Et ou les femes des Irish seignioz ou chieftaines, clament de auer sole propretie en certaine portion de biens durant le couerture, oue pouer de disposer tiels biens sanz le assent de lour Barons. fuit resolu & declare per tous les Justices, que le propretie de tiels biens serroit adiudge destre en les barons, & nemy en les femes couert, come la common ley est en tiel case,

Cest resolution des Justices, p le special order de seignioz Deputy, fuit register enter les actz del Counsel: mes la cest prouision fuit ad a ceo, q si aucun de les meere Irish ad possesse & enioy aucun portion de terre p cest custome de Irish Gauek ind, deuant le commencement del Raigne de nostre seignioz le Roy que oze est, que il ne serroit disturbe en son possession, mes serroit continue & establi en ceo. Mes que apres le commencement de la Maiesties raigne tous tiels terres serront adiudge de discender a les heirs per la common ley, & serront adiudge dehoz en auant possesse & enioy accordant,

Mich

Mich. 9. Iacobi.

En le Court de Castle-chamber.

Le course del Trial de Legitima-
tion & Bastardy.



Information fuit exhibit en le Castle-chamber enuers le euesque de K. & C.B. et auters, queux per pparctise et combination enter eux, et p vindue course de proceeding, ont endeuour de prouer le dit C.B. que fuit tout temps deuant reputed vn bastard, desre le legitimat fity, et hfe de G.B. esquire, al deherison, et defamation del E.B. que fuit la sole fille et hfe, del dit G.B. Et sur le Dier de cē cause, le case appieroit desre tiel.

Environ 26. ans deuant le bēll exhibit, le dit G.B. ad issue le dit C.B. sur le cozzps dun Trois Damosel, la quel durant la vie de G.B. ne fuit repuee sa feme, mes sa concubine: & le dit C.B. pur tout le temps auantdit, fuit solement accept, pur le natural fity de G.B. Mes nemy pur legitimat.

Après ceo, viz. 16. ans depuis la neissance de C.B. sa Mere estuant en pleine vie, G.B. prist al feme vn Dame de bonne estate & reputation, que le assent de ses Amies & ad issue per luy la dit E.B. & moyst. Après la mozt del dit G.B. C.B. son reputed fity, ne sa Mere, qui est vncors

Le course del triall de Legit. & Bastardie.

in die, ne plont riens p le space de 9. ans, mes oze tard, ils ont practise & combine oue le dit euesq; d'k. esteant de lour consanguinite, & oue plusors auts, de puer le legitimat del dit C.B. p vn irregular, et vndue course, al entent d'bastardise & disinherit le dit E.B.

Accordant a quel practise & combination, leuesque sans aucun fuit commence ou mone en aucun tempozall court del Roy, ou aucun bziese direct a luy, de certifier Bastardy ou legimation en cest case, & que plus est, sans aucun libell exhibit en son ecclesiasticall court touchant ce matier, de son teste demesne, priuatement, et nemi conuocatis conuocandis 9. ans apres le mozt del dit G.B. prist dispositions d'plusors testmoignes, a puer q le dit G.B. 29. ans deuant ad loialment marry, & prist al feme la dit Trois Damosell Mere del dit C.B. Et q le dit C.B. fuit le legitimate sirs & hie del dit G.B. Et ceuz depositions issint prises, le dit Euesque causast destre engrosse, & reduce en forme de vn solemne act, & aiant mise son signature & seale a cest Instrument, deliuer ceo al C.B. que publish ceo, & p colour de cest Instrument ou Act, declare luy mesome, destre le sirs, et hie legitimate del dit G.B. &c. Et p cest practise et misdemeanor, le dit euesque de k. et auters fueront censure, et sur ceo ceuz points fueront resolu.

I Coment que touts Matrimoniall causes ont estre de long temps determinable en les Ecclesiasticall Courts, et sont oze properment deins le Jurisdiction et conusans del clergy, vncoze ab initio, non fuit sic. car cibien causes d'Matrimony, que causes Testamentary, fueront ciuil causes, et apperteignent al Jurisdiction de ciuil Magistrat, come est bien conus al touts ciuilians: tantque les Christian Emperors et Royes, pur faire honoz al Prelates del clergy, ont grant, ou allow al eux conusans et Jurisdiction en ceuz cases.

Et pur ceo, le Roy D'engleterre, que est, & toutsfoits de droit fuit le fountaine de tout Justice & Jurisdiction en touts causes, cibien Ecclesiasticall, que Ciuil, deins les Dominions, coment que il allow les Prelates del Eglise, de exercer lour seuerall Juridictions en ceuz causes, queux properment apperteignent a lour conusans
vn

Uncoze per les rules del common ley, il ad superintendencie sur lout proceedings, oue pouer de direction, quāt, & coñst ilz procederont, et de restrainit, et correction, sils ne pcederont dueñt en plusors cases: come est manifest per les briefes de seuerall natures, direct al Euesques per queux le Roy commaund euz de certifier Bastardy, Excomunicac^o Profession, accouplemēt en loyal Matrimony, de admit^r clarks, de cautione admittenda, &c. Et auz p^r les b^res de Prohibition, Consultation, & Attachmēt sur Prohibition.

2. Fuit resoluē, que le question de Bastardy, ou legitimaey, doent estre p^rmerisnt moue en le tempozall court. Et si roy, et issue sur ceo doet estre ioyne la: et donques doet estre transmitt al ecclesiasticall court, p^r b^rief del roy destre examine et trie la: et sur ceo le euesque fakra certifficate al court del roy, a quel certifficat esteant fait in tiel due man^r, la ley done tiel credit, que tout le monde terra lie et esloppe per ceo. Mes de auter part, si aucun fuit a p^rouer Bastardy ou legitimaey soit p^rmerement commence in le ecclesiasticall court, deuant que ascū question soit moue de tiel mat^r en le tempozall court del roy, Prohibition qst de restrainetiel fuit, et si soit accompaigne oue p^ractise et fraud, come en cest case, ceo est, yn misdemeanor punissable en le Star-chamber.

A cest purpose, le Case de Corbett fuit mise, 22. Ed. 4. fitz. Consultation 6. Sir Robert Corbett ad issue 2. fitz. Robert & Roger; Robert le f^rs esteant deins le age de 14. ans, pr^rst al femme Matild, oue quel a son pleine age, si cohabit, & cogniti & reputati sunt pro viro & vxor palam. Uncoze apres, Robert le f^rs, demitte de luy la dit Matild, et viuant la dit Matild, espouse yn Letrice, et atant issue per Letrice yn f^rs, mozt, apres q^l mozt Letrice p^reach et declare ouertment, que el fuit la loiall femme de Robert, et que son f^rs fuit mulier et legitimate. Sur que Roger le puisne f^rs del S^r Robert Corbett commence fuit en le Spiritual court a reuerter les espouselz, en Letrice et Robert, et a metter Letrice al silence, &c. per que Letrice p^rchase prohibition, et sur ceo Roger monstre tout cest mat^r et p^rsa consultation, que fuit a luy deny, pur cest reason p^rincipalement, viz. que l'entent del fuit, en le Spiritual court

Le course del triall de Legit. & Bastardie.

court, fuit de Bastardizer le issue enter Lettice & Robert, et de puer Roger hfe al Robert, et l'acion et original de bastard home, ne fra paires moue en le spiritual court, meiz in le tempopal court, &c. Et p fait ce point plus cleare, 2. cases mise p Bracton, libr 5. tit de Exceptionibus c. 6. furr de remember.

1 B. aiant issue d'i corps dun fem inheritor nee duant espousels, p colour d'i clausi d'ire tenant p l' curtesie, meiz esteant p ce cause barf in assise post p luy ds A. si obtaine Bull d'i Pape, & p authorite d'i commence fuit in Ecclesiastical court, d' prouer son issue legitimate, quod facere non debuit, com Bracton la dit & pur i prohibition fuit grant de staier ce fuit, monstrant tout le matf, & quod prædictus B. ad deceptionem curie nostre & ad infirmandum iudicium in curia nostra factū, trahit ipsum A. in placitum coram vobis, in curia Christianitatis, autoritate literarum domini Papæ, ad præd puerum legitimandū, &c. Et cum non possint iudices aliqui de legitimate cognoscere, nisi fuerit loquela prius in curia nostra incepta per breue, & ibi bastardia obiecta, & postea ad curiam Christianitatis transmissa, vobis prohibemus, quod in placito illo ulterius non procedatis, &c.

2 En mesme le Chapter, Bracton mist l' forme dun aut prohibitiō, que fait le difference auant mise, plus euident, Rex talibus iudicibus, &c. Ostensum est nobis ex parte A. qd cum in curia nostra, coram iustitiarijs nostris itinerantibus in tali comitatu, arranauit quandam Assisam mortis antecessoris versus B. de quadam terra in N. idem B. timens sibi posse opponi notam bastardie in eadem Assisa, & ante prædictum aduentum iustitiariorum, & antequam ei bastardia opponatur in Curia nostra in dicta Assisa, & antequam fuerit per nos ordinario loci Inquisitio, de legitimate probanda, secundum regni nostri consuetudinem, demandata, literas domini Papæ ad vos directas impetravit, vt de legitimate sua cognoscatis, & ad probationem illius, testes admittatis, vt p hoc remaneat hæreditas & successio contra consuetudinem regni nostri, quæ huc vsque obtinuit, vrapprobata, & : Sede Apostolica confirmata, qd in causa successionis, & hæreditatis petitione, debet prius moueri placitum in curia nostra, & cum ibi obiecta fuerit bastardia, tunc deinde transmitti debet Recordum

Le course del triall de Legit. & Bastardy.

53

cordum loquæle, & cognitio bastardie ad Curiam Christianitatis, vt ibi ad mandatum nostrum de legitimitate inquiratur, quod quidem in hac parte non est obseruatum, & cum hoc sit manifeste contra consuetudinem regni nostri, quod habita vel habenda inter alios contentione de iure successionis, debiatis ad inquisitionem de legitimitate procedere antequam à nobis hoc fuerit vobis demandatum, vobis prohibemus, &c.

Per que est assés manifest, que si le Ecclesiastical court proceed al examination de bastardie ou legitimatation, sans direction del tempozall court, terra restraine per prohibition, & si soit fraud ou practise en tiel proceeding, q ceo e censurable en le Starchamber, le notable case del Babington chancelloz de Litchfeld, Trin. 3. Jacobi est direct President en le point.

3 Sicome le ecclesiastical judge ne poet enquire d bastardy ou legitimatation sans special direction ou maundement del Roy, issint quaut il ad receue le bryefe del Roy pur faire cest inquisition, il ne doit surcease, pur aucun appeale ou inhibition, mes doit tout sfoit proceed tanque il ad certifie la court del Roy: & ceo auxy appiert, en Bracton, libr. 3. cap. de Exceptionibus, 14. Cum autem iudex ecclesiasticus inquisitionem fecerit, non erit ab eo appellandum, nec a petente, nec a tenente: a petente non, quia talem iurisdictionem & talem iudicem elegit, a tenente non, quia sic posset causam in infinitum protrahere de iudice in iudicem, vsque ad Papam & sic posset Papa de laico feodo indirecte cognoscere. Mes cest point est plus manifest, per vn notable recorde compernant vn case de cest Realme, in Archiu. Turris claus. 8. H. 3. membr. 29. in dorso, en cest forme, Rex Dublin Archiepiscopo Iustituario Hybernæ Salutem: ad ea quæ vobis nuper dedimus in mandatis, vt nobis rescriberetis, quatenus fuisset processum in causa Nicholai de la Felda, qui contr Abbatem & Canonicos sancti Thomæ Dublinensis in Curia nostra, coram Iustitiarijs nostris, perijt duas carucatas terræ cum pertinentijs in Kilredhery, per assisam de morte antecessoris, cui etiam corā eisdem iustitiarijs, obiecta fuit bastardia, per quod ab ipsis iustitiarijs nostris ad vos fuit transmissū vt in foro ecclesiastico de Bastardia siue legitimitat agnoscere: nobis p literas vestras significastis, quod cum in foro ciuili

terra

Le course del triall de Legit. de Bastardie.

terram prædictam peteret per literas nostras de morte antecessoris, versus memoratos Abbatem & Canonicos, obiecta fuit ei nota Bastardiæ, quare in foro eodem tunc non fuit ulterius processum: memoratus etiam Nicolaus de mandato iustitiariorum nostrorum, in foro Ecclesiastico coram vobis volens probare se esse legitimum, testes produxit, & publicatis attestacionibus suis, post diutinas alterationes & disputaciones, tam ex parte Abbatis, quam ipsius Nicholai, cum ad calculum diffinitivæ sententiæ procedere velletis, comparuerunt duæ puellæ minoris ætatis, filiæ Richardi dela Felda Patris prædicti Nicholai, & appellauerunt ne ad sententiam ferendam procederetis, quia in hoc manifestum earum verteretur præiudicium, eo quod alias præcluderet eis via petendi hæreditatem petitam, nec possit eis subueniri per restitutionem in integrum. Vnde de consilio virorum prudentium (ut dicitis) appello deferentes, causam secundum quod coram nobis agitata est, domino Papæ transmisistis instructam, de quo plurimum admirantes non immerito mouemur, cum de legitimitate prædicti Nicholai per testium producciones & attestacionum publicationes plene vobis constiterit, vos propter appellationem puellarum prædictarum, contra quas non agebatur, vel etiam de quibus nulla fiebat mentio in Assisa memorata, nec fuerunt aliquæ partes illarum in causa prædicta, sententiam diffinitiuam, pro eo distulistis pronuntiare, & male, quia nostrum declinantes examen, id quod per nostram determinandum esset iurisdictionem, ad alienam transferunt dignitatem quod valde perniciosum esset exemplo. Cum, etiam si adeptus esset prædictus Nicolaus possessionem terræ prædictæ, per Assisam prædictam, beneficium petitionis hæreditatis prædictæ puellis plane suppetat in Curia nostra per breue de recto, maxime cum per literas de morte antecessoris agatur de possessione, & non de proprietate, & ex officio nostro in casu proposito, nihil aliud ad nos pertinebat, nisi tantum de ipsius Nicholai legitimitate probationes admittere, & ipsum cum literis nostris testimonialibus, ad iustitarios nostros remittere. De consilio igitur Magnatum & fidelium nobis assistentium vobis mandamus, quatenus non obstante appellatione præmissa, non differatis pro eo sententiare, ipsum ad iustitarios nostros remittentes cum literis nostris testimonialibus, ut de loquela coram eis agitata postmodum possint secundum legem

&

& consuetudinem terre nostre Hybernie iustitie plenitudine exhibere. Teste H. apud Glocester, 19. die Nouembris, vide supra a cest entent 39. E. 3. 20. 2. ou en brieve de Wotter, ne vnques accouple en loial matrimony fuit plead, & issne sur ceo iourne, & que mande fuit al Cuesque de certifier, & certifier que il ne poet riens faire & raison de vn inhibition que a luy vient hozs del Arches, cest retourne fuit tenuz insuffisant car la est dit, que il ne doet surceindre de faire le commandement del roy pur nul inhibition.

4. Daraignist fuit dit, que le berry cause & raison pur que l'Ecclesiasticall Judge ne poet enquire de legitimatis ou Bastardy, deuant que il ad receiue direction ou mandement hozs del tempozal court del roy, consist en ceo, que le court Christian nauoit vnques Jurisdiction ou potuer de entremedier oue tempozall enheritance, directe ou indirecte. Car fuit note, que Chzist mesme refusoit de medier en cause de tiel nature, quand sur petition fait a luy Luc. 12. Magister dic fratri meo, vt diuidat mecum hereditatem, il respond. Quis me constituit iudicem, aut diuisorem super vos? Et pur ceo en le temps del Henr. 3. quant le hstirped Jurisdiction del Pape fuit eleuate plus hault, que vnques deuant, ou puis, en les Dominions del Roy D'engleterre, le Pape Alexander. 3. aiant graunt commission al Cuesques de Winton & Eron de enquire de legitima natiuirate del Agatha Pere fil vn Robert de Ardenna, & si el serroit troue legitimate, de restorer le dit Robert al possession de certaine terres, dont il fuit dispossesse, esteant infozme que le Roy D'engleterre fuit graundment offend oue cest commission il renoue & countermaund ceo en cest point del restitution de possession, consulant & cõfessant que le establissement de possessions appartient al Roy, & nemp al eglise: quel case est reposit en le Canon ley, Decretal. Antiquæ collectiones 1. libr. 4. titul. qui filij sunt legitimi cap. 4. & cap. 7. en le 4. chapter, le commission est expresse, mes cap. 7. la renocation ou countermaundment appartient en cest foyme. Causam quæ fuit inter Fr. & R. de Ardenna, super eo quod mater iam dicti R. dicitur non fuisse de legitimo Matrimonio nata, experientie nostre commissimas terminandam verum, quia in literis nostris inseri fecimus, vt præfatus R. possessionibus, quarum possessor extitit, faceretis restitui

Le course del triall de Legit. & Bastardy.

restitui, si eadem possessione spoliatus esset, nos attendentes quod ad regem, non ad Ecclesiam spectat, de talibus possessionibus iudicare, ne videamur iuri & dignitatibus charissimum Christo filij Henrici Regis Anglorum derogare, qui, sicut dei cypimus, iudex est, & iudicatus, quod de possessionibus scripsimus, cum ipsorum iudicium ad se afferat pertinere, volumus quod Regi possessionum iudicium relinquamus, de causa principali cognoscatis, &c.

Mick

Mich^r 8. Iacobi.

Le Case del Royall Piscarie de le Banne.

E le Riuier de le Banne en Vlster, q^d deuide le countie de Antrim, & le countie d^e Colrane, enuiron 2. leagues d^e la Mer, ou le stream est nauigable. Il y ad un rich piscarie d^e Salmonz, q^d fuit parcel del antient inheritance d^e la Corone, come appiert p^{er} plusieurs Pipe Rolls, & surueies, ou ceo est troue en charge come seuerall piscarie : mes oze ceo est grant p^{er} le Roy al Citty d^e London en fee ferme. Le profit d^e cest Piscarie p^{er} le space de 200 ans passes, fuit pris & sbarc ent les Irish Seigniorz q^u ont fait incursion & intrusion sur les possessions del Corone in Vlster, & ont possesse p^{er} fort main les territoires adioynant al dit riuier de le Banne, iusq^s al p^{re}sent an d^e la raigne del nostre S^{on} le Roy q^u oze est.

Anno primo Iacobi, Sir Randall mac Donel ad obtaine un graunt a luy & ses Heires p^{er} Letters Patentes de le Territoire del Rout, q^d est parcell del Countie de Antrim, & adioynant al Riuier de le Banne, In ea parte, ou le dit Piscarie est, & ad tout temps estre. Per ceus Letters Patentes le Roy graunt a luy omnia Castra, messuagia, totia, molendina, columbaria, gardina, hortos, pomaria, terras, prata, pascua, pasturas, boscos, subboscos, reddit^{us}, reversiones, & seruita, piscarias, piscationes, aquas, aquarum cursus, &c. Ac omnia alia heredi-

Le case del Countie Palatine.

hereditamenta in vel infra dict' territorium de le Rout in comitatu Antrim, exceptis & ex hac concessione nobis hæredibus, & successoribus nostris reservatis, tribus partibus piscationis fluminis de le Banne.

Et sur cest graunt Sir Randall mac Donell fait petition a le Seignior Deputy, desire mise en quiet possession del quart part del dit piscarie, que adonques per speciall order del Counsell Table fuit mise en sequestration. Le Seignior Deputy esteant informé per l'attorney del Roy, que nul part de cest piscarie passoit al Randall mac Donell per cest graunt, requitoit le resolution de les cheefe Judges esteant del p^{ri}ncipal Counsell en cest matter, queux sur viero de plusors Pipe-Rolls, en que cest piscarie fuit trouue seuerallment en Charge, come parcell del auncient enheritance de la Cozone, & sur consideration en del dit graunt fait al Sir Randall mac Donell, certiffont leur opinion & resolution, que nul part del dit piscarie passoit al dit Sir Randall mac Donell, per les letters patens auandit. Et en cest case diuers points fueront consider, & resolu.

1. P^{ri}merment, coment que le rule del ciuill ley soit, que Flumin. & portus publica sunt, ideoque jus piscandi omnibus commune est in portu fluminibusque, quel rule est trouue en Bracton lib. 2. cap. 12. Uncoze per le common ley del Engleterre home poet auer proper & seuerall interest, cibien en un eato ou riuier, come en un piscary: & par ceo un eato poet estre graunt 11. R. 2. Plow. Comment 154. a. Si un graunt al auter aquam suam, le piscarie en ceo passera, per ceo que est encluse in ceo parcell aqua. Et N. Br. 123. quod permittat g^{ist} de libera piscaria, en tiel forme: Præcipe A. quod permittat B. habere liberam piscariam in aqua ipsius A. in N. que monstre que A. ad interest in le eato. Auxi piscary g^{ist} en graunt & en tenure, & per graunt de ceo, le soile passa: car 40. Edw. 3. 45. Monstrauerunt g^{ist} d'un piscarie, q^{uod} imply que ceo containe terre & demesne: Car autrement distresse ne poet estre prise en ceo, come est noate Plow. Comment 154. a. vid. 34. Ass. p. 11. graunt del piscarie in le riuier de Tesc. al Abbe d' Riuaux saluo stagno molendini. Auxi piscarie est demaundable per præcipe N. Br. fol. 2. c. Et assise g^{ist} de piscarie N. Br. 179. l. Car home poet auer estate de franchtenement in piscary, Firz. Ass. 422. temps E. 1. in as-

Le case del Royall Piscarie de le Banne.

ports del Seignior Coke : issint l'oye del Mer est p'quis
sit royall, s. Coke 107. Sir Henrie Constables case : q' si cest
reason. Quant le Statute d' 18. E. 3. nul subiect pouoit pas-
ser ouster le Mer, sans special licence del Roy : mes la est
enact, que la Mer soit ouert a tous merchants. Et tous
ports & hauens q' sont ostia & ianuæ Regni, appartenant
al Roy, p' ceo q' il est custos totius regni : s. Fit. Nat. Br. 113. a.
le roy doit de droit sauuer et defender son realme, c'ibiz vers
le Mer, que vers ses ennemis : et que le roy ad mesme le
Prerogative & interest en les braches del Mer, et nauiga-
ble Riuers, cy hault que le Mer floto et refloto en euz, que
il ad in alto mari, est manifest per pluzors authorities et
recor'ds.

1 Le Roy p' les Letters Patents fait al grand Ad-
mirall D'engleff, graunt a luy non seulement Jurisdiction
& power d' determine maritime causes mes omnia bona, wa-
uiata, Flotzon, letzon, & Lagan, ac omnia bona, mercimonia, &
catalla in mara deperdita, seu extra mare proiecta, ac omnia &
singula casualia, tam in vel super mare, vel litora, crecas, vel co-
steras maris, quam in vel super aquas dulces, portus, flumina,
riuus, aut alia loca superinundata quæcunque, infra fluxum &
refluxum maris, seu aquæ ad plenitudinem, a quibuscunque a
primis Pontibus versus mare, per totum regnum Angliæ, aut
Hyberniz, &c. Emergentia, Contingentia, seu Prouenien-
tia, &c.

2 Le commission de Seiners, q' fuit agard p' le Roy,
per vertue de son prerogative Royall, deuant aucun statute
fait en tel case, extend non seulement all walles & banks
del Mer, mes auxi del nauigable Riuers, & freshwaters,
Regilt. f. 127. a. b. N. B. 113. a. Et est recite en le statute de
25. Hen. 8. cap. 10. que le Roy per reason de son dignite &
prerogative Royall, doit prouider, q' nauigable streames
sont fait passable, &c.

3 Le city de London per un charter del roy, ad le
riuer de Thames graunt a euz, mes pur ceo que fuit cap-
ceau, que le soile & ground del riuer ne passoit per cest
graunt, ils purchasont un auter charter, per que le roy
graunt al euz solum & fundum del dit riuer, per force de
quel graunt, le citie a cest iour receau rents de ceuz,
queux fixont posts, ou font warfes, ou auters edifices.
sur

Calthrop 167

On a ce charter de la ville de
London au Roy Henry 8.
l'annee 30. d'octobre 1534.

London, le 30. d'octobre 1534.

London, le 30. d'octobre 1534. Le Roy Henry 8. a deuote
temp. Jac. 1. d'octobre 1603. Banne is in Coleraine

Sur le soile del dit riuier.

4. Enter les pias del cozon, 40. E. 3. in Archiv. Ca-
stri Dublin, cest entry est troue. Domini Reges Anglia &
domini Hybernæ de Iure Coronæ habent per totam aquam
de Boine a Villa de Droghedagh, vsque ad Trim, filum aquæ
vulgariter vocatum le Waterhard, continens in latitudine
24. pedes in loco profundiore eiusdem aquæ, ita quod
Barella, Maremium, & Marchandizæ per huiusmodi filum,
hinc atque illinc, ire & redire possint per filum aquæ predictæ,
absq; impedimento &c. & la bn Judgmēt est enter in mesme
le Roll, que bn weare erect per le Abbe de Dellefont en le
dit riuier serroit abate, & sine impose sur le Abbe, &c. Et
ceo agreee oue Glanvill que dit, que vn perpresture port es-
tre fait cibien in aquis Regijs, quam in vijs Regijs, vid. 19. Ass.
p. 6. que le riuier de Lee est troue per Inquisition le hault
stream del roy, & 1. & 2. Ph & Mar. Dier 117. a. le Thames
est apell le Kings stream, & in l. statute d. 28. Henr. 8. c. 22.
enact in vest Realme, les riuers de Barrow, Noyr &
Suir, sont appell the Kinges Rivers & les weares erect en
eux sont appell perprestures: & coment que le roy permit
son people pur lour ease & commodit̃ de auer common pas-
sage sur tiel navigable riuers, vncore il ad sole interest en
le soile de tiels riuers, & aury en le piscarie; coment q̃ le
profit de ceo nest communement pris & appropriate per
le Roy, si ne soit de extraordinary & certeine annuall value
come cest piscarie de le Banne ad tout fotts estre, vid. en le
case de Swannes 7. Cooke 16. a. le Roy Henr. 8. graunt al
Strangewaies totam illam liberam piscariam vocaram le fleet
en Abbotbury, que est vn bay ou creeke del Mer, & co-
mēt que l. Abbe ad piscary la deuant le dissolution, est desir
entende, que le Abbe al commencement auoit ceo per grant
del Roy, esteant vn seuerall piscary sur brach del Mer, &
per consequens vn piscary Royal. vid. Plo. Com. 31. 5. b.
Mer que fuit resolute, que le riuier del Banne, cy auant
come le Mer flow & reflow en ceo, est flumen regale, & le
piscary del Salmon la vn Royall piscary, que appent al
roy come vn seuerall piscary, & nemy al ceux queux ont le
soile ex ytraque parte aquæ. Mes de auter part fuit agreee,
que chescun Inland riuier nient navigable, appartient al
ownors del soile, ou il ad son course, 28. Ass. p. 93. Et si tiel
riuier

f. Matt. Hale says of this is a
mistake: that fresh rivers are
not called streams le roy
respect of property; but be-
cause of publick use, & they
being of speciall care; in
like sort as publick roads are
called of h. highway: not
because any property in the soil
de jure maris. p. 1. cap. 2. in
Hargraves law tracts. p. 8.

Salmons though they are
great fish, are not royal fish
as this report w^d intimate
Hale. p. 19. 43:

Le case del Royall Piscarie de le Banne.

Riuer courge enter 2. mannoys, et est le Meate et Boun-
dary enter eux. L'un moitié del riuer & Piscarie appent al
bn Seignior, & l'auter moitié al autre, & ceo appiert Libr.
Intrae fol. 666. b. en trespas quare piscatus fuit inseperali pis-
caria, & piscem inde, viz. 2. Salmones, &c. cepit, &c. le Defen-
dant dit, que il fuit seisie del Mannor de B. quod se exten-
dit vsque ad finem aquæ de W. quæ est eadem piscaria, in qua
supponitur piscationem prædictam fieri, ex australi parte, &
q le plaintiffe eodem tempore quo, &c. fuit seiscitus de ma-
nerio de A. cum pertinentijs quod se extendit ad medium fili
aquæ prædictæ ex parte Boreali eiusdem aquæ, maneriaq; præ-
dicta ab Oriente æqua longitudine versus Occidentem se ex-
tendunt, & quod ipse le defendant, & omnes illi quorū statum
ipse habet in manerio de B. à tempore quo non extat memoria,
seisciti fuerunt de parte Australi prædictæ aquæ, vt de seperali
piscaria sua, vt de parcella manerij sui prædicti, & similiter ha-
buit communiam piscariæ in p̄dicta parte Boreali eiusdē aquæ,
dicto manerio de A. pertinentem. Le plaintiffe replie, quod a-
qua prædicta ex vtraq; parte est son seuerall piscary, sans ceo
que le defendant ad common d̄ Piscary in Boreali parte dictæ
aquæ. Vid. 2. R. 2. fol. 5. a. q̄ b̄ de rationabilibus diuisis ḡst̄ de
tiel Piscary.

3 Tiercement fuit resoluë, que nul part de cest Royall
Piscarie de le Banne poet passer p le graunt del Terç ad-
ioynant p generall graunt d̄ tous Piscaries: car cest Roy-
al Piscarie nest appartenant al terç, mes est Piscary en gros,
et parcel del enheritance del Cozone aperluy. Et generall
parols en graunt del roy ne passeront tiel speciall royaltie
que appent al Cozone p prerogatiue, come mines royall,
amerciamentz royall, Escheats royal, ne passeront p gene-
rall parols d̄ tous mines, amerciamentz, et Escheats. Et
a cest entent sont plusoys cases direct en le point, en le case
de mines, Plo. Comment. 333. b. 334. a. & 9. & 10. Eliz. 268.
269.

Darrainment fuit agree, que ou le roy ad graunt al
Sir Randall mac Donell tout le territoire adioinant a cest
riuer, & tous piscaries deins cest territoire, exceptis tribus
partibus piscariæ de le Banne, que le quart part de cest pis-
carie ne passera a luy per cest graunt, car le graunt
del Roy ne passera rien per implication, 2. H. 7. 13. &c.

*Hale pa. 33. Inolibet concessio regis debet capi stricte contra regem, quando potest. Ceux
intelligi dualibus viis. 2 R. 3. 4. Le general grant del roy non presumitur excludere
sejusum, sauuer special words. Hale pa. 112.*

Le case del Royall Piscary de le Banne.

77

Ceux points furent resolu en cest Case, per les rules & authorities del common ley. Mes ouster ceo, diuers rules del Ciuill ley, & customary ley del fraunce, agreable al nostre ley, en cest point, furent cite hors de Renatus Choppinus vn tresbone auteur en son *Tractate de Domanio Francia* lib. 1. titul. 16. de fluminibus. Fluminum sunt duo genera, dit il, Regalia quedam, alia Bannalia, siue priuata. Regalia dicuntur, ex quibus Princeps iure patrimoniali vectigall capit, & in quibus modum & tempus piscationis constituit, vid. Stat. W. 2. c. 47. Et non solum regalia flumina nuncupantur, quod Regum dominio sunt attributa, sed etiam quod eorum curam sibi Reges ac Principes assumpserunt, nec non ex eo, quod piscarias, ceterosque publicorum fluminum redditus, qui ararij publici fuere, in fiscum suum redigerunt. Sunt & lacus publici regales, flumiorum superiorum instar: nam lacus publicos locant, & vectigalia in fiscum suum referunt, ideoque publicano, qui lacum vel stagnum conduxit, si piscari prohibeatur, vtile interdictum competit. Iustissimum enim est ob vectigalis fauorem, interdicto eum tueri. Et quant al auters riuers queux courge per confinium prädiorum, il dit que per prescription, ou permission des Princes, aut alio iusto titulo, omnia talia flumina facta sunt priuata, quæ natura publica erant, & quod piscatio in certa parte fluij potest ex pacto constitui, vel continenti multorum annorum vsu acquiri: & sic potentiores amnis accolæ, si plurib' annis soli piscari sunt, ceteros pari iure vti prohibent, quamuis Mari, quod natura omnibus patet, seruitus imponi priuatorum cautione non potest. Et ouster il monstre, que les auncient Roies de France piscationi in fluminibus publicis modum prescripserunt, & piscarias, ac reliquos fluminu prouentus, qui arario publico olim ascribebantur, passim in fiscum suum retulerunt. Pour le prerogative del Roy deins le Mer il cite vn vers de Iuuenall.

Quicquid conspicuum pulchrumque ex æquore toto est.

Res fisci est vbicunque natat. Et Cuiatius de feodis f. 205. 2. fuit aussy cite, ou il dit, regalia sunt viae publicæ, flumina nauigabilia, & ex quibus sunt nauigabilia, portus, vectigalia, monetæ, &c.

fisci

Trin.

Trin. 9. Iacobi.

En le Eschequer.

Le case del Countie Palatine de Wexford.



Puis troue possie en l'county de Wexford, q' un Prendergrast. anno 27. H. 8. fuit seisse en fee de certaine terre en le dit county, & ceo teignoit de George donq's counte de Salop & Waterford, & seignior de Wexford, vt de p'sona dicti Comit' existet. Comit. Palatin. Comitatus Wexford.

Fuit troue ouster, q' p' l'estatute de 28. H. 8. ca. 3. q' est entitle Le stat. de Absentees, fuit inact, q' l'roy H. 8. ses heirs et successors aueront et enioieront come en droit de Corone d'engleterre. tous honours, Mannors, Castles, Seignories, franchises, liberties, counties Palatine, iurisdiccions, fees de Chivaler, Advowsons, &c. qur l' dit countee de Salop, auoit deins l' realm de Ireland. Apres q' le dit Prendergrast morust seisse de cest fee, son heir eskeant de plein age.

Et si ore, si cest office, l' traerra seisse en mains de l'roy, si primer seisin, fuit l' q'stion. Et si ceo un point soleint fuit cōsider, viz. si l' heir del dit Prendergrast tiendra de l'roy in Capite, ou p' q' tenuit il tiendra le dit terre. Et fuit resoluë, que ore il tiendra cest terre del Roy in Capite.

Des

Mes fuit obiect p^r l'counsell dⁱl Prendergast, q^u l' tenure
q^u est treuve p^r l' office ne sⁱra o^re ho^r Tenur del Roy en
Capite, mes Tenur en common Socage p^r fealty can-
tum, p^r 3 reasons.

1^{re} Tenure en Capite content estre, ab antiquo de Coro-
na, come estre p^resse en l' Stat. dⁱ Prærogativa Regis, cap. 1.
Et est dit, 30. H. 8. Dier 44. a. q^u Tenur en chief comenceoit
en auintient temps, par grant sⁱl Roy p^r sⁱ fence dⁱ son p^rson p^r
la Cozone: mes cest Tenure est nouveloit buenus al Roy
H. 8. p^r l' art dⁱ Absentees, q^u p^r ceo ne port estre Tenur dⁱl Roy
en Capite.

2^{de} Tenure en Capite est tous sⁱ foies Tenure dⁱ p^rson dⁱl
Roy. N. B. fol. 5. Et est de cy hault nature, q^u nul home poet
creat ceo, ou aver ceo, forsq^u l' Roy meisme. Car nul subiect
est able dⁱ p^ruerfer tiel Tenur, ou espable del grant dⁱ tiel
Tenure. Car si l' Prince l' eign sⁱrs del Roy, duant l' Sta-
tute dⁱ Quia emptores terrarum, ad fait froissint dⁱ tert, a te-
ner de son p^rson, ceo ne serroit Tenure en Capite. Come est
tenus 30. H. 8: Dyer 44. b. & cules Tenant dⁱ un auintient
honor, come Berkhamsted teignoit del Roy en Capite, comēt
q^u le Roy grant l' dit honor al Prince, & a les heires Royes
D'engleterre, vncoze l' Prince nauer a l' p^rogative dⁱl Ca-
pite Tenure en cest case, durant le vie del Roy, 21. Ed-
ward. 3. 41. b.

3^{de} Nul Tenure create p^r Subiect, comēt que soit Te-
nure en gros de son p^rson (car subiect poet aver Tenure
en gros de son p^rson, 8. Henr. 4. 1. 19. Edw. 4. 9. 13. El. Dyer
290. b.) poet p^r aucun possibilitie grow ou aspire dⁱ estre un
Tenure en Capite del Roy. Et par ceo, si le Prince, ou
auter subiect create tiel Tenure de son p^rson, et apres
est fait Roy, ceo ne deuiet Tenure en chief. Et si le
Roy vient al Seignorie en gros per attainder un Sub-
iect de felony, ou per common Escheat, ou per descent, ou
p^r purchase, le Tenant ne tiendra de luy en Capite, mes
come il teignot deuant 30. H. 8. Dier 44. b. Ilint si le Roy
purchase un Manor de que I. S. est tenant, si le Roy grant
le Manor al auter reseruant les services de I. S. o^re I. S.
tient del p^rson del Roy, car les services sont en grosse,
vncoze il ne tiendra en Capite, 29. Hen. 8. Br. Tenures 61. &
Br. Liucry 57. Et le case 17. Eliz. Dier 345. a. semble plus
foye.

fort que le case en question. Car l'istint trois d'ant l'Esche-
tor & Gaillardin, & certain Tert ou Gales fuit antiepiement
tenus del Prince & Gales, & le denize de aler en guerre
del Prince, a les charges del Prince, & q'br Owen ap Da-
uid teignoit la dit. text de Rois Elizabeth come & la prin-
cipalite & Gales en capite: vncor fuit tenus p'councell del
court de wards filz Teigne en capite. Vide le Stat. de
Magna Charta c. 12. & le lre de 28 Henr. 6. fol. 11. b. a ces
paroles.

Des d'autre part fuit argue p le counceill del Roy, et re-
solue p Sir Io. Denham chiefe Baron, et tout le court, que
cest Tenure, come ces estra toue, est Tenue de Roy in capite,
Et en le Argument de cest point plus alarge 2. choses sub-
ront principalement consider, 1. le Originall et nature de
countie Palatine: 2. le nature et qualite del Tenure en
capite.

Et pur le premier, fust premierement obſerue, que Comtes ou Countee, eſt vn noſme ou title del honoz, & dicte Comitando, vel ſequendo Principem: et ceuz plous queuz ſieront aduance a ceſt title fueront Summi Proceres, & Rege proximi, come Caſtaneus in Catalogo glorie Mundi dit. Et ceſt noſme ou title de honoz fuit ab initio acompaign oue vn honozable office. Car ceſtz q̄ fuit Comtes ad vn ter= ritozie assigne a luy, p̄ garder et gouernoꝝ: q̄ fuit appel Comitaſus. Ceſt title ne commenceoit deſtre frequent, tanque le declination del Roman Empire, ceſtateuoit en le temps del Charlemaine, que ordaine & inſtitute diuers Countees in Germany, Italy, & France, & done a euz non ſolement vn absolute comand in partiall af= faires delns leur ſeueral Territozles, mez auſi ordinaire iurisdiction in ciuill & criminall cauſes: & p̄ ceo eſdit en le Imperiall law, Quod Comes eſt iudex ordinarius, & Graue en Dutch, ſignifie vn Judge, cyben que vn Earl.

Des ceuz Countees ne furent touz de equalz begree : car furent de 2. sorts viz. Comites simplices, & Comites Palatini, ou del p^rimer & second order. Car comment que Comites simplices auoient tiel commaund & Iurisdiction, come auant est monstre, bncouze Comites Palatini, furent de plus hault Ranc, & auoient diuers Royall franchises & priuiledges, que ne furent graunts al simple countees. Cest

Cest noſme & office d Countee fuyt introduire en Engleterre
hoyz d Germany, p les Normans long temps dunt l Norman
Conquest, Mitrons Case, 4. Coke 34. & le Record de
Domesday prouue ceo, q fait mention d ſeueral counties en
Engleſſe. Mes le premier County Palarine, viz. le County Pa-
larine d Cheſter fuit erect en temps d Willi^{am} le Conqueror,
Cambden 464.

Pur le noſme del Countee en noſtre ley, certes, ceo est le
plus auncient noſme d dignitte & honoz, & deuant l temps
del Edw. 3. fuit le ſole noſme de dignitte & honoz en En-
gleterre. Car le noſme et title de Duke, Marquis, & Vicount
ſont de puisne temps: car le premier Duke fuit create en
temps d Edw. 3. le premier Marquis en temps R. 2. & le pre-
mier Viſcount en temps Henr. 6. et le noſme ou title d Ba-
ron, neſt noſme de dignitte ne addition, 8. Henr. 6. 10. le
Seigneur Louells case. Mes Countee est parcell del
noſme, et del ſubſtance del noſme, et ſi ſoit omis en Brieſe,
le Brieſe abatera, 39. Edw. 3. 35. le case del Gilbert Vin-
ſtreuill Countee de Angus, 3. 14. Edw. 3. Brieſe 278. le case d
Hugh de Audley Countee de Gloceſter. Et ceſt tuit d coun-
tee eſt inſtar cognominis, & ne beſoign d bſi auſ ſurnom, eſe
ſi action ſoit port dſ 10. Countee de Oxford, ſus auſ ſur-
noſme eſt ſufficient, 7. H. 6. 27. 12. E. 3. Brieſe 454. Auy ceſt
titl neſt merge ou confounded p title d Duke, car ſi countee
ſoit fait Duke pendant l brieſe, ceo ne abata l brieſe. Come
ou l Countee d Lancaſter fuit fait Duke d Lancaſter 25. E. 3.
39. Brieſe 409. iſſint ou action fuit port dſ countee d Rich-
mond, ſi plead q ſi fuit Duke d Brittain, & non allocat 11. E. 3.
Br. 473.

Pur l office d ſimple ou ordinarie Countee per noſtre
ley, ſi auoit cuſtodiam comitatus, & auctoritate de caſſe,
poſſe comitatus, & ſuppreſſer rebellions & ryotts, &c. que
fuit un Partiaill command: ſi auoit auy Jurisdiction
en ciuile et criminall cauſes, et a ceſt entent, ſi auoit 2.
courts: 1. ſon Turne ou viciu p criminall cauſes: 2. le
county court p ciuill cauſes. Le premier fuit le court d Roy,
car Pleas del corone ne poent eſtre tenus en aucun court
forsque en court del Roy: le ſecond fuit le court del Coun-
tee meſme. et pur ceo eſt appell le county court: mes pur
ceo que ſi fuit auy immediate officer al court del Roy, pur
faire

lib 6. 53. b. x cont.

auoy l brieſe n'abatera d l brieſe
est fait chivalier, pendant l brieſe.
F. 6. 12. 3. 49.

car ſi fuit forreine hono-
r & ne reſpect ont fluy.
Mobility d Ireland, ou Scotland
lib 7. 35. b. 4

Le case del Countie Palatine.

faire execution de toutes les Rois, & le Comes ou Countee
mesme comitibatur Principem, & fuit p^r plus part attedant
p^r Roy, ou en son Conveill, ou en ses guerres, le Roy se soit un
Lieutenant ou Deputie a luy, comme Fineux dit, 12. Henr. 7.
17. b. cest a dire, le Viscount, q^u exerce meism l'office
en tous points. Et est deist note q^u en tous counties que
sont simple counties, & subiect al ordinaire jurisdiction del
courts del Roy, le Roy meisme fait l'Viscount; mes deins
counties Palatine, ou le Countee ad iura Regalia, le countee
meisme, & neint le Roy fait l'Viscount 12. H. 7. 17. & 18. & 4.
Coke 33. Mittons case. 22. E. 4. 22. Et tout ceo fuit note p^r l'
originall de countee en genral, & p^r l'nomme & office de Ordina-
rie Countee.

Pur l'originall, nomme, & prerogative de Countee Palatine
q^u fuit un extraordinarie countee: 1. fuit note & obsue,
Que fuit appel Palatinus, vel Comes Palatii p^r ceo que il
fuit un chiefe officer & councelloz en l'Pallace de l'Emperoz,
& est dit q^u il ne fuit soleint companion del p^rson del Prince,
mes comes curarum. Par extans curis, solo diademate dispar:
& pur cest reason, le Prince comitibatur a luy plusors de ses
Royall prerogatives: 2. fuit observe, que cest honoz de coun-
ty Palatine fuit p^rmermet institute par l'Emperoz, apres
que le Empire fuit translatee en Germany. Et pur ceo
les Doctoz del Imperiall ley telgiont, Quod solus Prin-
ceps, qui est Monarcha & Imperator in regno suo, ex plenitu-
dine potestatis, potest creare Comitum Palatinum. Baldus est
Rescript. 6. de precibus Imperatori offerendis.

Fuit auxi resolve, que accordant a cest rule, le Roy del
Engleterre peut bien create un countee Palatine: car
il est Monarcha & Imperator in regno suo: come est ap-
parent par plusors records, & Judgements en Parlia-
ment.

En le Preface del Seignior Cooke al quart part de
ses Reports, un auncient charter del Roy Edgar que re-
cite le stile del Roy, est tiel, Ego Edgarus Anglorum Bas-
ileus, omnium Insularum Oceani que Britanniam circumda-
cent, cunctarumque nationum, que infra eam includuntur, Im-
perator & Dominus, &c.

Et

Et a cest entent Marth. Paris. in historia maiori, fol. 272. dit que quant un difference auoit perueue le Roy William Rufus, & Anselme Archeuesq de Catesbury touchant le Iurisdiction del Pape en Engleterre, Rex Willielmus allegauit, quod spectabat ad officium Imperatoris, quem vellet Papam eligere, & ob eandem rationem, quod null' Archiepiscopus vel Episcopus regni sui Curie Romanæ vel Pape subesser, præcipue cum ipse omnes libertates haberet in regno suo, quas Imperator vindecabat in Imperio.

Per le Statute d' 18. H. 8. cap. 2. enact en cest Realme, est declare, que les Roies de Engleterre, are lawfull Kings and Emperors of the said Realme of England, and of this land of Ireland.

Ilint p l' Act de 16. Rich. 2. cap. 5. communement appelle Statut d' Præmunire, est aussy declare, That the crown of England hath euer bin so free, as that it hath bin subiect to none, but immediately vnto God : & le Statut de 25. H. 8. enact en Engleterre, & establiſh en cest Realme, 28. Henr. 8. cap. 20. ou est recite que les Realmes d' Engleterre et de Ireland, recognising no Superiour vnder God but onely the King, haue been, and yet are free from subiection to any mans lawes, but onely to such, as haue bin made and ordained within the said Realmes, &c.

Darrainment, la Cozonne d' Engleterre es plusieurs auts Acts de Parliament, est appell Imperiall Crown, et la Cozonne de Ireland est appendant a ceo, 28. Henr. 8. cap. 20. et vniue & huit al Imperiall Cozonne d' Engleterre, 33. H. 1. cap. 1. Car coment que Britanny fust unfoiſs ſubiect al Empire de Rome, que Ireland ne fust unques, vnecois ceo fust abandon, et tout ouſterment relinquiſh per le Empereur de Rome Anno Domini 428. & quant ceo fust apres reduce al Monarchy, tiel Monarcha fust, & vnecois eduy un absolute Emperor : accordant a ceo q Cassaneus in Chronologia gloriæ Mundi, dit, Reges absoluti habent Imperium, & edici possunt Imperatores. Et il cite le Texte, 1. Regum cap. 3. Hoc erit in Regis qui imperaturus est vobis, aussy il dit, Rex Anglie est absolutus Monarcha in Regno suo. Et par ceo le Roy d' Engleterre estant un Empereur deins le p' d'omnions, poet accordant al rule auantdit, creare Comitem Palatinum.

Le case del Countie Palatine.

Et sicome le Roy D'engleterre, ad absolute pouwer de creater countee Palatine, issint il ad create plusors countees Palatines en ambideux Realmes, 1. En Engleterre, le countee Palatine de Chester, fust create en temps del William le Conquerour, Cambden fol. 464. Et Mat. Paris. Histor. magn. 406. appel le countee de Chester, Comes Palatii: 2. le county Palatine de Durham, qui statim a tempore conquestus comitatus Palatinus iudicatus est, Cambden fol. 600. Des le common opinion est, q R. 1. create l' Cuesque Pudsey le primer countee Palatine de Durham. 3. le county Palatine de Lancaster, q fust erect en temps Edw. 3. Plow. Comment. 215 b. Et ceuz 3. counties tantselement ont estre counties Palatines en Engleterre. Car Ely, coment que fust un liberte d'aueir conusans de tous causes secular, graunt per le Roy Edgar appel Saint Etheldreds liberte, ne fust vnqs county Palatine: & les Seigniors Marchers si les Marches de Gales, coment que ils auoient Royall Seignories en leur seuerall Territoires 19. Hen. 6. 12. & 152. 11. H. 4. 40. Incoze nul deuz auoit tous les priuiledges ol countee Palatine.

En Ireland 3 Palatines fueront creat en temps H. 2. le primer en Leinster, que fust grant al county Strongbow per tout cest Prouince: le second en Meth, graunt al Sir Hugh de Lacy l' eigne: le 3 en Vlistir, graunt al Sir Hugh de Lacy le puiue. Des apres quant William le Marshall D'engleterre, aiant marrie le ffile & heire de Strongbow, adissue 5. firs & 5. filles & le 5. firs eskeant moztz sauns issue, le Seigniorie de Leinster disendoit a les 5. filles, sur partition fait entre euz, chescun ad entre countie alotte a luy viz. le countie de Catherlogh fust alor al eigne, l' countie de Wexford al second, le county de Kilkenny al tierce, le county de Kildare al quart, le Territoire de Leix, que est oze le Queenes countie, al cinquiesme: & sur ceo chescun de euz, ad un seuerall countie Palatine, & tous les libertes & prerogatiues en la seuerall purparty, come Strongbow & le Marshall, auoient en l' entier Seigniorie d' Leinster. Come il 3. parcerers sont un Hannonz queuz sont partitione: chescun deuz auera Hannonz & court Baron deins la purpartie 26. Henr. 8. 4. Il auoit ausy certaine Royall liberte deins l' county d' Kerry & Desmond graunt per

Le case del County Palatine:

62

per Ed. 1. al Thomas Fitz Anthony : et autiel en countie de Tipperary graunt al countee de Ormound p Ed. 3. q̄ solemēt continue a cest iour, ou tout s les auters sont resuins ou extinguish.

AUx chescun countee Palatine create p le Roy D'engleterre, est Seignior del vn entiere county, et ad en ceo iura regalia, quæ iura regalia consistont en 1. princippall points, viz. en royall Jurisdiction, et en Royall Seigniorie. Per reason de son royall Jurisdiction, il ad tout s les hault courts, & Officers de Justice, q̄ le Roy ad : & per reason de son royal Seigniorie, il ad tout s les royall services, et royall Echeats que le Roy ad : et pur ceo cest county est mecrement distoyne, & seporate del Cozone, come est dit en le case del Duchie Plow. 2 15. b. Ilint que nul brief del Roy courge la, foras briefs de Error, que estant le dernier ressort & appeale, est solement except hors de tout s lour Charters, 15. Eliz. Dyer 321. & 345. & 34. H. 6. 42. Ilint en Ireland, que est realm apertuy, erroneous iudgement done en l' chief place la, sera reuery en Bank le roy en Engleterre, Et Bracton lib. 3. titul de Corona c. p. 8. dit, q̄ Comites Palatini regalem habent potestatem in omnib, salvo dominio domino Regi sicut Principi.

Ilint a Ireland & come County Palatine

Le royall Jurisdiction de countee Palatine appiert en le chart del Edw. 3. graunt per autorite de Parliament p que le Palatinate de Lancaster est erect : ou le roy graunt al Iohn de G. Duke de Lancaster, quid habeat infra Comitatum Lancastrie Cancelleriam suam, ac breuia sua, sub sigillo suo pro officio Cancellarie deputando, consignanda : Iusticiarios suos tam ad placita Coronæ, quam ad quæcunque alia placita communem legem tangentia tenend. ac cognitiones eorundem, & quæcunque executiones per breuia sua & ministros suos ibidem faciend. & quæcunque alia libertates & iura regalia ad Comitatum Palatinum pertinentia, addid. libere & integre, sicut comes Cestræ infra eundem comitatum Cestræ dignoscitur obtinere, &c. Cest charter de Lancaster ad relation al royal liberties del county Palatine de Chester, que avoit meisme les courts & Jurisdiction, come est le charter del Wil. le Conquerour, que fait Hugh. Mais le premier countee de Chester, soit greent, viz. d'uns & celi

307

A 2

count

Le case del Countie Palatine.

tout cest countie a luy & a cest heires, ita liberè ad gladium sicut ipse Rex tenebat Angliam ad Coronam. Cest antient graunt, per auintient allowance done tous les Liberties & Prerogatives del countie Palatine: & issint le countee ad royall jurisdiction la, coment que les courts del hault Justice ne sont expresse en le dit Chart, et sur cest reason, come semble est dit 12. Edw. 4. 16. q le countee Palatine de Lancaster fuit per Parliament tempore Ed. 3. mes Chester & Durham sont per prescription: mes ceo n'est desre entend mecrement per prescription, car nul franchises que se exaltat in Prerogativam Regis, poet estre gaine p prescription, 1. Henr. 7. 23. b. Mes p ceo que tiel generall parols en les auintient graunts p blage et allowance donont royal jurisdiction, ou tiels graunts a cest tour ne passeront ty hault liberties; 1. Henr. 7. 13. b. Vide lib. Intraç 419. a. ou est plead que Chester fuit countie Palatine p prescription, & murrer sur cest plea.

Mes que Chester & Durham fuit counties Palatine, & ont tous les Courts de Justice, et mesme le Jurisdiction royall, que est particulièrement graunt al Duke of Lancaster, p le Charter de Ed. 3. est apparent p plusors authorities p Chester, 12. E. 4. Fitz. Jurisdiction 61. 34. Hen. 6. 42. 19. E. 3. Fitz. Jurisdiction 29. 15. Eliz. Dyer 321. a. b. Pour Durham, 15. E. 3. 58. Fitz. Jurisdiction 30. ou est dit q countie Palatine de Durham ad les Justices & Chancerie demesne, 1. E. 4. 10. 45. E. 3. 17. 5. B. 2. Fitz. Quare impedit 165. 12. Eliz. Dyer 288. p que est manifest, que tous le counties Palatine en Engleterre auent royal Jurisdiction deins leur Territories.

Ils auent auy vn royall Seignorie, que consistoit en 2 points, 1. en Royall seruices, 2. en Royall Escheats, Quant al Royal seruices, il auent pober d creat Tenures en capite de euz mesmes, & auy p grand serianty: car ils auent pober de creat Barons: come le pmyer Countee de Chester immediatint sur son creation substituoit Barones, viz. le Baron de Haderly, le Baron de Malbanke, le Baron de Malpas, le Baron de Winghamton, &c. Camden Cheshire 284. & issint les autres Palatines auent tiels Barons deins leur counties, come le Baron de Walton en Lancaster, & le Baron de Wintonle. Willeshapiche, Et chescun Baron est tenu per

per graund Serianty, 2. Coke le **Seignior Cromwels Case**, 81.a. & cest capite **Tenure del county Palatine** est accompagnie oue les **Prerogatiues**, que sont incident al **Tenure en capite del Roy**: car le heire suera liuerie hozs bl Chancerie Del **Seignior** & il enter deuant liuerie, il sera adiudg entrudoz, & rendra les meane profits, &c. Et auz paiera fine pur alienation, 14. Hen. 4. fol. 5. & 6. & 26. Hen. 8. 9. De fre tenus deins le county de Lancaster liuerie fra sue, car le Duke la, ad iura regalia, 28. Hen. 8. Bf tit. Livery 55. liuery fra de fre en le countie de Lancaster parcel bl Duchie, 8) *causa* contra de terres hozs del countie, 13. Eliz. Dyer fol 303.a. Office troue p commission hozs bl Chancerie al Westm. bl tert tenus in capite del county Palatine de Chester, est void: Mes sif troue p comission hozs bl Chancery in l'Eschequer la, 19. Eliz. Lyer 359. b. James Manley tenuit de Arthuro Principe vt Comite Cestræ, & auoit liuery fait a luy, que fuit imperfect & void en Ley, per que il enter, & fuit tenus intrudoz sur possession del Roy, apzès le mozt d Prince Arthur.

Quant al Royall Escheats, le countee Palatine auoit les Escheats de Treasons, que le Roy per son Prerogatiue auera, de terres tenus d tous autres Seigniors: mes ceo est desre entend des Treasons que fueront al temps quant le Countee Palatine fuit erect, & nemi de nouell treasons p Act de Parliament apzès, 12. Elizab. Dyer 288. b. 289.a.

Et sicome chescun countee Palatine en Engleterre auoit tiel Royall Iurisdiction & tiel Royall Seignorie come appiert p les authorites deuant mises: Jussint chescun county Palatine en Ireland auoit meisme les prerogatiues, come appiert p plusors Records de cest Reaume.

Pur le Seigniorie de Leinster dont le countie de Wexford fuit parcell, le countee Strongbow alant gaine ceo sibien per conquest, que per mariage del filz & heire de Mac Morough Prince de Leinster, surrender tout le dit Territoire al Roy Henr. 2. & reppist graunt del Roy de tout que il ad surrender, forsque del Cite de Dublin cum cantredis adiacentibus, ac Villis maritimis & Castris: de quel surrender & graunt, Giraldus Cambrensis fait men-

Le case del Countie Palatine.

tion, libro primo de Hybernia expugnata cap. 28. Et coment que cest Oigimall graunt nest troue de Record icy, vncoze est manifest p plusez Records. q William le Marshall countee de Penbroke q mariot la file a heit d Strong-bow, a les 5. firs successiuement: a apres les 5. files Coparceners en leur seuerall purparties de cest graund Seigniozie auoent iura regalia cibien en point d iurisdiction, q en popnt d seigniozie.

Le charter de Callan vn bill en le couoty de Kilkenny dat. 20. Martij 20. Ed. 3. proue ceo expressement, que fuyt monstre auant, en cest foyme, Lionellus dux Clarientia, Radulphus Comes Stafford, & Anna la Dispenser domini libertatis de Kilkenny, omnibus ad quos presentes literæ perueniunt salutem. Inspeximus chartam Will. Mareſchalli Comitis Pembroce, domini Lagenia Burgenſibus villæ de Callan, non ralam, non abolitam, nec in aliquo viciatam, sub hac forma, viz. Sciatis qd' ego Willielmus Mareſchallus Comes Pembroke, &c. concessi Burgenſibus meis de Callan, omnimodas libertates quas decet Burgenſes habere, & mihi licet conferre, viz. qd' nullus Burgensis trahatur in causam, vel respondeat de villo placito, quod pueniat infra metas Burgi, in Castello, vel alibi, nisi in Hundredo villæ, exceptis placitis q sunt de hominibus hospitij mei: concessi etiam eisdem Burgenſibus matrimonium contrahere sibi & filijs, & filiabus, & viduis, sine licentia dominorum suorum, nisi forte forinſeca tenementa tenuerint de me in Capite extra Burgum, &c.

Auz le charter d noua Rosse, alias Rosse pontis en l'countie de Wexford grant al dit bill p Roger le Bigod countee d Northfolke, que marriot la file eigne del William I Marshall, ad meſme les clauses, come appert p l'enrolment de ceo en le Chauncerie icy. Et ceuz Charters fueront monstres a prouer que le Seignior de Leinster auoit Tenures en capite a per consequence vn Royall Seigniozie deus cest Territoire.

Et a prouer auz que il auoit Royall iurisdiction que est auant monstre de countie Palatine, 2. auz Charters fueront produys. 1. fuit inspeximus portant date 1. Henr. 4. en l'el countie. Inspeximus qualdam libertates vsus & consuetudines per Burgenſes villæ de Kilkenny in eadem villæ habitos & visitatos ac inter ceteras libertates, ijs per chartas Willielmi Mareſchalli

reschalli quondam Comitiss Pembroke concessas, & sub magno sigillo, quo domini liberratis regalis de Kilkenny in cancellaria sua ibidem dudum vtebantur consignatas, & coram nobis in Cancellaria nostra ostensas in hæc verba, &c. per que appiert, que il auoit hault court de Chauncery, & graund Seale, que est vn certayne argument, que il auoit iurisdiction Royall, en tous auters points, come les countees Palatines en Engleterre.

Et a cest entent fuit auxi monstre le charter de foundation del Abbey de Dulsque, en mesme le county de Kilkenny, per que le dit William le Marshall ad done al dit meason diuers franchises & liberties. Et quod habeant sibi omnimodam forisfacturam hominum suorum: sola iusticia vite & membrorum mihi & hæredibus meis retenta que parols monstront que il auoit power de exerciser hault iustice en capitalls causes, ou pleas del cozone, que est auter manifest pprose de Royall iurisdiction.

Et coment que ceuz records parlont tantolement del county de Kilkenny, vncoze est bien proue pereux, que le Seignior de Leinster ad mesme les prerogatives en le county de Wexford, car il auoit forlque vn entier Palatinate per tout le Territoire de Leinster, dont Wexford est parcell, tanque le partition auantdit fuit fait.

Mes a prouer expressement, que le Seignior de Wexford, apres le partition fait, auoit iura Regalia deins cest county, le Statute de Absentees 28. Henr. 8.c. 3. fuit monstre, per que le Seignior de Catherlogh, que fuit le inheritance del Duke de Northfolke, & le Seignior de Wexford que fuit le inheritance del countee de Salop, fueront resume, & vest en la cozone: car en le preamble del act est recite, que les dit Seignories en ditz seuerall counties auoient power de tener tous mannes de pleas, & que les byesses del Roy ne courgeont pas la, & en le corps del act, tous counties Palatine & Royall iuridictions sont y expresse parolls resume. Et vn auter act fait en mesme le Parliament de 28. H. 8.c. 34. ouent parolls, fuit auxi proue, per que le Royall liberte de Wexford estre extirper per le dit act de Absentees, fuit resume en tous points, forlque en le power de grauer parolls, & que prouiso, que terra totall al Justices de common Bench al Dublin

Le case del Countie Palatine.

Dublin de tener plea sur bziese d'entry en le post, & accepter conusans des fines des aucuns terres deins le countie de Wexford. Et plusors aus Records fueront monstres auant, p' que fuit manifest, que Wexford fuit vn absolute countie Palatine, et p' consequence le Seignior la auoet cibien vn royall Seigniorie, que vn royall jurisdiction vid. leg. Plea Rols d' Exchequer, 3. E. 3. in Breminghams Tower, ou Adam le Rous & sa feme pleadant licence de alienation de Terres tenus de Seignior d' Wexford, quant le dit seigniorie fuit en mains del Roy: vid. auy in Archiu. Turris London le liuerie fait al Laurence Hastings countee de Pembroke & seignior de Wexford d' tous les terres en cest Reaume, en que son countee Palatine & iura regalia sont specialint expresse & mention.

Et a prouer cest point plus pleinement, diuers autres Records fueront monstres, per queux fuit manifest que les autres countees Palatine auant mention en cest Reaume auoent mesme les prerogatiues del Seigniorie & Jurisdiction royall, 1. Come le seigniorie d' Meth, que coment que fuit graunt per Henr. 2. al Sir Hugh de Lacy en generall parols en cest forme, viz. Henricus Rex, &c. Scias me dedisse & concessisse Hugoni de Lacy, pro seruitio suo terram in Midia, cum omnibus pertinentijs suis, per seruitia quinquaginta militum sibi & heredib' suis, tenend. & habendum a me & heredibus meis sicut Murchardus O Melaghlin (que fuit le Irish Roy de Meth deuant le conquest) cam tenuit, vel aliquis alius ante illum, vel postea. Quare volo & firmiter precipio, quod ipse Hugo & heredes sui post eum infra predictam terram habeant omnes libertates & liberas consuetudines quas ibi habeo, vel illi dare possum, &c. quel Charter fuit enroll en le court del Common pleas, 1. Ed. 2. al petition de Gess. de Geneuil, q' auoit marie vn des coparcens de cest Territoire, & est oze troue enter les Records de Breminghams Tower. Uncoz les seigniors de cest territoire, d'aus cels seigniorie descendoit al Roy Ed. 4. ont en iura regalia la, come l' countee Palatine d' Chester, q' auoit auy vn Palatinate graunt a luy p' general parols, come deuant est monstre, etien en point de seigniorie, q' en point de jurisdiction.

Et

Et a prouer ceo le Charter de Cess. de Geneuil auantdit
facta magnaribus suis Midia, fust monstre, esteant registred
en le Liger booke de Tristernagh, en ceux parolz; Sciant
præsentis & futuri, quod ego G. de Geneuill, auditis & inelle-
ctis chartis & munumentis magnatum meorum Midia, & an-
tecessorum suorum, ipsorum, viz. quicum Hugone de Lacy
seniore ad conquestum suum primo venerunt in Hyberniam
similiter & eorum qui de Waltero de Lacy filio & hærede
dicti Hugonis sunt feoffati, per assensum & consensum Ma-
tildæ de Lacy vxoris meæ, concessi & hac præsentis charta con-
firmaui pro me & prædicta Matilda, & hæredibus prædictæ
Matildæ, magnatibus supradictis & hæredibus eorum, placitum
Namij vetiti de omnibus tenentibus in eorum terris, in
curijs suis terminare, & si per aliquem dictorum magnatum
placitum de verito Nauio moueatur p quarelam alterius mag-
natis, qui de nobis tenet in capite, in Curia mea, vel prædictæ
Matildæ vel hæredum prædictæ Matildæ huiusmodi placitum
ibidem terminetur: præterea si in terris dictorum magnatum
Hutesium leuari contingat, vel clamor, Viccomes de Trim in-
quisitionem capiat, vtrum tales transgressiones spectant ad Co-
ronam vel non, & si transgressiones illæ spectant ad Coronam
in Curia mea vel dictæ Matildæ, vel hæredum dictæ Matildæ
omnino terminentur, & si non spectant ad Coronam in ipsorum
Curijs terminentur in quorum tenementis oriuntur. Cess
charter proue ambideux points, scilicet, le royall Jurisdic-
tion, & le royall Seigniorie: car appiert pet ceo que le
Seignior de Meth auet power de determine tous Pleas
del Corone, que est principall point de Jurisdiction roy-
all, & que il ad auz Tenures en capite, & magnates, deins
son Territoire, queux magnates sont tiels Barons come
le countee de Chester ad create deins son County Palatine
come est auantdit. Et pur ceo plusors Gentlehomes cy-
bien en Meth que en auters Territoires, queux auent
tiels Royall liberties, auent le title de Barons, come le
Baron de Skreene, le Baron de Nauan, le Baron de Galtim,
en Meth, le Baron de le Narow, & le Baron de Rheban en
Kildare: le Baron de Idrone en Cathelagh: le Baron de Burn-
church en Kilkenny: le Baron de Neill en Wexford: le Ba-
ron de Loughmo in Typperary: le Baron Misset, & le Baron
Savage in Vister.

Le case del Countie Palatine.

Et pur ceo, tout temps depuis que cest Seigniorie de Meth beneignoit al Corone per discent al Edw. 4. ceo ad estre tenuz come un certain Ley en l'Eschequer ley, viz. que si troue soit p office que aucun ff deins le county de Meth soit tenuz del roy come de son Manor de Trim, per regale seruitium, que ceo est un Tenure en capite, & tout folsz lineages ont estre sue de tiels terres: come appiert per innuable Recordz de cest Court, & ceo que cest regale seruitium fuit Tenure en capite del Seignior de Meth quant le county Palatine fuit en Esse la.

Et ouster ceo, a prouer le royall jurisdiction del Seignior de Meth, un record fuit monstre del tout le proceeding en Assise de nouel disseisin pozt per Iohn countee de Salop versus Willielmum Nugent & sa feme, pur certaine terres en Moyrath: per quel record appiert, que Anno 25. Henric. 6. Rich. Duke de Yorke adonques Seignior de cest Liberty, grauntoit le commission de prendre cest Assise, desouth le reste de son Seneschall en cest forme, Richardus dux Eborum, Comes Marchia, & Vltonie, dominus de Wigmore, Clare, Trim, & Conaght, dilectis & fidelibus suis Willielmo Bois iusticiario suo ad placita coram Seneschallo suo libertatis sue Midia, Richardo Bathmilit, Edwardo Somerton Armigero, Willielmo Sutton Armigero, & Roberto de la Field, Armigero, salutem. Sciatis, quod constituimus vos Iusticiarios nostros vna cum ijs quos vobis associaverimus, ad assisam nouz disseisinae capiendum, quam Iohannes Talbot Comes Salopie arraniauit coram vobis, per breue nostrum versus Willielmum Nugent Armigerum & Iohannam uxorem eius, de tenementis in Moyrath, &c. Ideo vobis mandamus, quod ad certos diem & locum quos ad hoc prouideritis, assisam illam capiat, facturi inde quod ad Iusticiam pertinet, secundum legem & consuetudinem libertatis nostre predictae. Saluis nobis amerciamenis inde provenientibus. Mandamus etiam Vicecomiti nostro libertatis nostre predictae, &c.

Per quel record, & infinite autres de mesme le nature, troue en chescun Count & record al Dublin, est manifest, que le Seignior de Meth fuit un county Palatine, & ad ius regale en poine de jurisdiction.

Ouster ceo, tout le Territoire de Vlfier fuit un county Palatine, & auoit toutz les prerogatiues auantdit, tant que

Le case del Countrey Palatine: 66

que ceo discendoit al Roy Edw. 4. & a prouer ceo un record hoys del Breminghams Tower fust produce que remaiuent les common Plea Rolles la, 3. Edw. 2. membr. 26. ou cest entrie est fait; Hugo de Lacy quondam Comes Ultonia tenuit totam Ultoniam, exemptam & seperatam a quolibet comitatu, &c. Et placitauit in Curia sua omnia placita quæ ad Iusticiarios, & Vicecomitem pertinet; & habuit propriam Cancellariam, absque hoc quod reciperet returna alicuius Vicecomitis.

Darrainement, le royall Libertie de Kildare auoit continuance tant que l'attainder del Gerald countee de Kildare, per Act de Parliament 28. Henr. 8. cap. 1. Mes apres quant son fies fust restoe a son antient Inheritance, p Letters Patents dated 1. Maij, 1. & 2. Phil. & Mar. comment que tous liberties, priuiledges, honours, Jurisdictiones, conusans de Pleas, &c. fueront regraunt a luy, bncore cest special exception fust fait, Magna Curia de recordo & libertate Comitatus de Kildare tantummodo exceptis. Ceux Records, & auters a mesme le intent, fueront monstres auant a prouer le royall Jurisdiction & les royall Seignories des countees Palatine sen Ireland: que records sont les sole authorities queux auomus icy, comment la Ley ad estre prise auant ceux heures, en cest Realm: Car deuant cest temps nul Reports ont estre fait et preserue des cases argues adindge icy, come ad estre ble en Engleterre.

Et issint sur consideration del nature & county Palatine, & des Prerogatives incident a ceo, fust resolu, q̄ tiel countee auoit un royall Seignorie cibien en Ireland, q̄ en Engleterre, & q̄ tiel Royal Seignior poet bien auer un Tenure en capite de son person,

SEcondment, sur consideration del nature & qualite del Tenure en capite del Roy, fust argue et resolu, que cest Tenure en question, que fust del person del countee Palatine de Wexford, esseant veu en la Corone per act de Parliament, sera oye un Tenure en capite del Roy. Car coment que fust agree, que Tenure en capite est proprement del person del Roy, ou del Corone del Roy immediatement, pur ceo que le service incident a cest Tenure fust

Le case del Countie Palatine.

fuit primerment ordaine pur le defence del person del roy, & la Corone, & issint est properment un Tenure en grosse, & nemy del honoz ou del Mannour, N. Bf fol. 5. k. Et coment que cest Tenure ne poet estre create per un subiect, esteant meerement en condition dun subiect, car le Prince le firs eigne del Roy ne poet create Tenure en capite, 30. Hen. 8. Dyer 44. b. Uncoze, sicome le Roy per annexing del honoz ou Mannoz al Corone, don a ceo tiel Prerogative que les Tenants de cest honoz ou Mannoz teignent de luy in capite, come le honoz de Raliegh, que fuit annex al Corone. 11. Henr. 7. 33. Hen. 8. Bf Tenures 94. Et issint fuit le honoz d Berkhamsted en auncient temps, devant ceo que fuit annex al Duchy d Cornwall, 21. Edw. 3. 41. & en cest realm le Mannoz d Trim est aury annex al Corone, come appiert per l'estatute 10. H. 7. cap. 15.

Et mesme le mannoz le Roy, per exempting et sepearing un countie, ou auter graund Territoire del Corone, poet faire le Seignioire de ceo cy Royall et absolute, & issint qualifie le person del Seignior per communicating a luy les royall Prerogatives, que les Tenures de son person seront Tenures en capite: & tiel Seignioire est chescun county Palatine, que esteant hors del ordinary Jurisdiction de Corone, fait le Seignior en cest respect, plus hault que un ordinary subiect, & per consequence hors del Martine ou rule de nostre Ley: que un subiect nest capable dun Tenure en Capite: car accordant al rule del Civile Ley q est mise per Cassaneus in Catologo gloriae Mundi, qui habent regale feodum sunt reguli quidam: et oue ceo come est devant expresse, Bracton agreea, libr. 3. titul. de Corona ca. 8. Comites Palatij regalem habent potestatem in omnibus, salvo dominio domino Regi sicut Principi.

Fuit aury resolute, que ne besoigne de necessity que chescun capite Tenure soit ab antiquo, nient obstant les parols de Prerogativa Regis cap. 1. que declare que le Roy auera primer seisin de ipsis qui tenent ab antiquo de Corona. Car si le Roy a cest iour graunt terres, tenendum de luy sans expresse aucun service certain, ceo est Tenure en capite de son person. 19. Henr. 8. Bf Livery 57. Issint poet le roy p expresse parols reserue Tenure per service d Chivaler de son person, que est aury Tenure en capite.

Aury

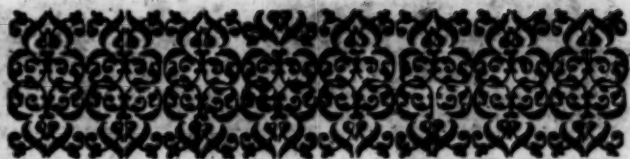
Auxy nest un generall rule sans exception, que nul Tenure create originalment per un subiect poet deueigner un Tenure en Capite. Car coment, que la ley soit issint come est tenus 30. Henr. 8. Dier. 44. b. que si mesnaltie soit tenus del Roy in Capite, & le Tenant tient del mesme per seruice del Chivaler, si ceo mesnalty escheat per mort del mesme sans heire, le Tenant ne tiendra en Capite del Roy mes per seruice del Chivaler come deuant: Mais si le Tenant Purchase tiel mesnalty, ou ad tiel mesnalty per discent: Uncoze ou le mesnalty est tenus del Roy in Capite, & le tenaunce yient en lieu del mesnalty per le act del tenant, il tiendra, come le mesme teignoit, en Capite. 19. Eli. Dier 349. Seignior, mesme, & tenant, le Roy est Seignior, le mesme tient del Roy in Capite, & le tenant tient de luy in Socage, si le Tenant obtaine releas del mesme, ou forindge le mesme, il oze tiendra in Capite: Car volenti non fit iniuria. Et seroit iniuriosus al Roy, si perdrait son Tenure in Capite p le act del Tenant, & aueroit en lieu d ceo tant solement un Tenure in Socage.

Darraignmēt, un manifest difference fuit mise enter le case de Principallity de Gales, 17. Eliz. 345. 2. & cest case de countrey Palatine. Car ou deuant le subiect de Gales al corone D'engleterre, home teignoit terre del Prince de Gales p seruice de aler en son guerre, ceo ne fuit Tenure dont la common ley poet prendre notice: Car ce Principallity de Gales ne fuit gouverne p la common ley, mes fuit dominion aper luy, & auoit ses proper leys & customes: & pur cest reason quant ce pais fuit reduce desouth le subiection del Corone D'engleterre, tiel Tenure q fuit del person d Prince de Gales ne poet deuenir un capite Tenure d Roy D'engleterre: Mes chescun county Palatine sibien en Ireland q en Engleterre, fuit originalment parcel del mesme le Realme, & deriue del Corone, & fuit toussoit gouverne p la ley D'engleterre, & les terres la fueront tenus p seruices & tenures dont la common ley prist notice, coment que le Seignior auoit seuerall Jurisdiction, et Seignior p sepetate de la Corone: et pur ceo le Tenure in capite del countee Palatine, est de mesme le nature que le Tenure in capite del Roy, et issint estrant deuenus al Corone terra Tenure in chiefe del Roy,

Le case del Countrey Palatine.

Roy, come ceo fust devant del countrey Palatine : & le reason & cest difference appiert pleinement, 19.H.6. fol. 12. Cest case fust argue per le atturney general pur le Roy, & p. lo. Meade & Edw. Fitz. Harris pur Prendergast.

Paschaë



Paschæ 9. Iacobi.

En le Common Banke.

Le case de Commenda.



quare impedit post p le roy heris Cy-
prian Horsfall & Robert Wale, sur speci-
all plea pleade per Wale le encumbent,
le Atturney del roy demurre en ley : &
sur ceo le case en substance fuit tiel.

Le corporation d Kilkenny estreāt pa-
trons dūm Vicarage deing le Diocesse d
Ossory, ont present a ceo un Patrick Fynne, q sur leur pre-
sentation fuit admit, institute, & induct. Apres ceo durant
l'encumbency dū dit Fynne, Adam Loftus Archevesque de
Dublin, & Ambrose Forth Doctoz del Chūill ley estreant cō-
missioners Delegates p granting d faculties & dispensati-
ons en cest realme accozdant al statute de 28.H.8. cap.20.
per leur letters de Grace dat. 9.Octob. 33.Eliz. grantont
al lo. Horsfall adonques Evêque de Ossory, que le dit E-
vesque vnum vel plura beneficia, curata, vel non curata, sui vel
alieni iuris patronatus, non excedentia annuum valorē quadra-
ginta librarum, ad tunc vacantia, vel quæ imposterum vacare
contigerint, perpetuæ Cōmendæ titulo, adipisci, occupare, re-
tinere, omnesque fructus ad familię suæ sustentationē conuer-
tere possit, iuribus siue institutis quibuscunq; in contrariū non
obstantibus : quel faculty ou dispensation fuit aprez confesse.

Le case de Commenda.

Et ratifié par lettres patentes desous le grand Seale de Ireland, accordez al dit Roie de 28. H. 8. c. 20. Apres ceo, viz. 20. Maij, anno 38. Eliz. Patrick Fyane le Incumbent mozt, per que le dit Vicarage estant void, & issint continuant void per temps semestre, p que le Euesque, ad ticle de collater a ceo p laps, le dit Euesque per vertue del dit facultie ou dispensation, adeplus est, occupavit, & retinuit, le dit vicarage perpetue Commenda titulo, & prist les fruits de ceo a son vse, insques al 1. iour de Febr. Anno dom 1609. a quel iour le dit Euesque mozt. Apres que mozt, le dit Cyprian Horsfall aiant purchasé le prochain auoidance de de cest Vicarage, present le dit Wale, que fuit admit, institute & induct: & apres le roy present bn Winch, que estant disturbe per le dit Horsfall & Wale, le roy pozt Quare impedit.

Et si le dit euesque, quant il ad obtaine & occupé cē Vicarage p vertue de cest faculté ou dispensation, fuit fait p ē perfect incumbent de ceo issint que le esglise estant pleine de luy, nul ticle p laps pouloit deuoluer al roy durant le vie del euesque, fuit le principal point moué & debate en cest case.

Et en le argument de cest point / que fuit argue al barre p̄m̄ement p le conseil al common ley, & apres per 2. aduocates, bien appis en le common ley, & al Bench per toutz les Justices, choses furent p̄ncipalment consider per ceuz queuz arguont pur le clarks del roy.

1. Si le euesque pouloit per aucun ley, auer & tener cē benefice sans tiel dispensation ou faculté.

2. Quel effect ou operation cest faculté ou dispensation auera per la ley.

Quant al p̄mier, ils teignent pur clere ley, que bn euesque, p le antient ecclesiasticall ley D'engleterre, ne pouloit tener bn autre benefice oue curie deins son diocesse: & sil auoit tiel benefice deuant son promotion al euesquerie, que ceo deuient void, quāt il est create en euesque. Et ceo est le antient ley D'engleterre, come est souentfoits dit en le case del euesque de S. Dauid 11. Henr. 4. & 41. Edw. 3. 5. b. accorde a ceo. Et le reason est, pur ceo que le euesque ne poet visiter luy mesme, & ceter que

que ad l'office de Soueraigne, ne retiendya l'office de Sub-
 ject, come Hankeford dit in le dit case de 11. Henr. 4. & sur
 cest reason est dit en 5. E. 3. 9. que si parlon soit fait Dean,
 le parlonage deuent void, pur ceo que dignity & benefice
 ne sont compatible, Auzi nul Ecclesiasticall person, per
 les antient Canons & counceils, pui soit auer 2 Benefices
 oue cure simul & semel, mes le pmyer fuit boyd per le pri-
 sell del second: & ceo fuit l'antient Ley del Eglise hse en
 Engleterre long temps deuant l'estatute de 21. Hen. 8. que
 fuit fait en affirmance de cest antient Ley, come appiert
 en Hollands Case en le 4. part des Reports de le Seigni-
 or Coke: & oue ceo accordant les liuers de 24. Edw. 3. 33.
 39. Ed. 3. 44. a. Et N. Br. 34. l. Et le text del Canon ley, que
 est le proper fountaine de cest learning, Libr. Decretal. titul.
 de Prebendis & dignitatibus cap. de multa, proue ceo pleine-
 ment, ou est dit, De multa prouidentia fuit in Lateranensi
 Concilio prohibitum, vt nullus diuersas dignitates Ecclesia-
 sticas, vel plures Ecclesias parochiales reciperet, cōtra Sancto-
 rum Canonum instituta. Et quia vero propter præsumptiones
 & quorundam cupiditates, nullus hactenus aut rarus de præ-
 dicto statuto fructus prouenit: nos euidentius & expressius oc-
 currere cupientes, præsentis decretis statuimus, vt quicumq; re-
 ceperit aliquod beneficium curam habens animarū annexam,
 si prius tale beneficium habebat, eo sit ipso iure priuatus, & si
 forte illud retinere contenderit, etiam alio spoliatur, &c. Circa
 sublimes tamē & literatas personas quar maioribus beneficijs
 sunt honorandæ (cum ratio postulauerit) per sedem Aposto-
 licam poterit dispensari. Et oue ceo accord le Text in libr.
 Decretor. causa 21. quæst. 1. in duabus Ecclesijs Cleric⁹ con-
 scribi nullo modo potest. Et issint est apparant, que l'Eues-
 que, per nul ley, poet auerou retainer cest Benefice deins
 son Diocese, sans Dispensation, que est relaxatio iuris, & per-
 mitt ceo desirer fait, que la ley ad prohibit deuant, 12. Hen-
 ric. 8. 6. a.

Secundment ils arguont, que le faculty ou dispensation
 sauantdit grant al Euesque d'Osory fuit void a tous
 entents: & si ceo prendroit effect hocoze ceo ne fait
 l'Euesque perfect encumbent b cest Vicarage, quant il prist
 & occupie ceo esteant void p vertu de cest faculty, mes que

Le case de Commenda.

ceci continue void, ainsi que le Roy ad title a presenter pur laps. Et si clearing de cest point, 1. le originall & l'inconueniente & Dispensations, & non obstates fuit consider. 2. fuit enquire quant, & en si mannoz l. Canon ley & Rome fait introduce & admit en les Dominions del Roy D'engleterre: & le si le roy ou le Pape pouoit de iure dispenser oue le Ecclesiasticall ley en cest, & autres cases, deuant le fefang de cest statute de faculties.

Et fuit dit, que le non obstante fuit timent & le primerment ble en le court del Rome, si que Marfil. Par. pronounee un veniens la dit court, pur introducing cest clause de Non obstante: q' ad estre un malheys precedent, & mischievous al tous commonweales de Chrestendome. Car les tēporal Princes perceiuant q' le Pape dispensoit oue ses Canons, en imitation de luy ont ble leur prerogative de dispenser oue leur penall Leyes & Statutes, ou ouant ils ont cause leur Leyes estre religieusement obserue, come les Leyes & Medes & Persians queux ne pouissent estre dispensed with, come est dit le liur de Hester, vide le case de Penall Statutes, 7. Coke fol. 36. b. Et pur ceci un Canonist dit, Dispensatio est vulnus, quod vulnerat ius commune. Et un aut dit, que tous abuses seront reformez, Si duo tantum verba, viz. Non obstante, non impedirent. Et Mar. Paris. in Anno Domini 1245. ayant recite certaine decrees fait en le conseil de Lions, que fueront beneficiall pur l'eglise D'engleterre, sed omnia hæc, & alia, dit il, per hoc repagulum Non obstante, infirmantur.

Et pur monstret quant, & coment le Canon ley fuit introduce en Engleterre, & quel person de iure pouoit dispenser oue l'Ecclesiasticall Ley en cest case, deuant le fefang del Statute de Faculties: fuit noate & obserue, que apres que l'Euesque de Rome ad assume sur luy destre spiritual Prince ou Monarch de tout le Mounde, il ad attempt aux de doner Leyes al tous Nations, come un real mark de son Monarchie. Mes ils sachant bien quod vbi non est condendi autoritas, ibi non est parendi necessitas, ne impose les Leyes al primes, peremptorimēt sur tous gens sans distinction, mes offer eus timide & precatio. Et pur ceci primerment il causast certaine rules destre collect par le gouvernement del Clergy tantum, queux il appell Decreta, & nemi

nem leges vel statuta. Ceux Decrees fueront publiſh en l'an 1150. que fuit durant le raigne del Roy Stephen : et par ceo ou le Seignior Coke ad noate en le Preface als. part de ſes Reports, Quod Rogerus Bacon, frater ille per quam eruditus, in libro de impedimentis ſapientie, diſt. Rex quidem Stephanus allatis legibus Italia in Angliam publico edicto prohibuit, ne ab aliquo detinerentur, fuit probablement coniecture, que ceo eſt deſtre intend d'ceux Decrees, queux fueront adonq's nouelmēt compile & publiſh. Uncoz ceux Decrees eſteant receue & obſerue p le Clergy des Weſterne Eglises tantum (car le Eaſt Church ne vnques receuſoit auſcuns de ſes rules ou Canons : Kellawayes Reports, 7. Henr. 8. fol. 184.) L'Eueſque de Rome attempt auxy de trahire le Laity al obedience de ſes Ordynances, p degre'es : & a ceſt intent, p'mierment il propound certaine rules ou Ordynances pur abſtinence ou iours d'faſting, deſſi obſue per le Laity cybien que per le Clergy, queux fueront ſur le p'mier Inſtitution, appell per vn gentle paroll, Rogationes, come Marſilius Par. libr. Deſenſor. pacis, part. 2. cap. 23. ad obſue, & inde come ſemble, le ſemaine de abſtinence p'chein deuant le feaſt de Penthecoſt fuit appell le Rogation weeke, ceſt temps de abſtinence eſteant appoint al comencement per tiel Ordynance que fuit appell Rogatio, & nemz praeceptum vel statutum. Quant les lay Homes de lour deuotion auoient receue & obey ceux ordynances d'abſtinence donques l'Eueſque de Rome paſſoit ouſter (de vna praſuptione ad aliam tranſiuit Romanus Pontifex, cōe Marſil. Par. la dit) & feſoit pluſoys reſcripts, & orders, per nomen Decretalium, queux fueront publiſh en l'An. 1230. q' fuit Anno 14. H. 3. aut eo circiter vid. Matth. Pariſ. hiſtor. magn. 403. & ceux fueront fait de lier tout le laytie, cybien Soueraigne Princes, come lour ſubjects, en tiels choſes q' concernont lour ciuill & tēporall eſtates. Come que nul lay home aueroit le donation del Eccleſiaſtical benefice : que nul lay home marrioit deins certain degre'es, ouſter lez degre'es limit per la Leuiticall ley : que tous enfants nees deuant eſpouſels ſeront adiudge apres les eſpouſels legitimate, & capable de tēporall enheritance : que tous Clerkes ſeront exempt de ſecular power : & autres de meſme le nature,

Des

Le case de Commenda.

Des ceuz Decretalls esteant publiés ne fueront entièrement & absolument receiue & obey en aucun part de Christendome, mes Melement en le temporell Territoire del Pape, que est appel per les Canonists, Patria obediens. Des del auter part, plusors de ceuz Cannons fueront tout ousterment reiect & disobey en France & Engleterre, & auters Christian Realmes que sont appell Patria consuetudinaria. Come, le Canon que prohibuit le donatien des Benefices per manum laicam, fuit tousz foiz disobey en France, en Engleterre, le Realme de Naples, & diuers autres countries et commonweales, Et le Canon de faire les enfans legitimates, queuz sont neez deuant espousels, fuit specialment reiect en Engleterre, quant en le Parliament tenuz al Merton, omnes Comites & Barones vna voce responderunt, nolumus Leges Angliæ mutari, quæ hucusquæ vixitæ sunt, &c. Et le Canon que exempt clerks de secular power ne fuit vnques pleinement obsue en aucun part de Christendome, Kellaway 7. Hen. 8. 18 1. b. q̄ est vn infallible argument, que ceuz ordinaances nauoient leur force per aucun authorite que le court de Rome ad de imposer Leyes sur tousz Nations sans leur consent: Des per le approbation & vsage del Peuple, que ceuz ad receiue & ble. Car per meisme le reason que ils pũssent reiecter vn Canon, ils pũssent reiecter tous les autres, vide Bodin. lib. 1. de Rep. cap. 8. ou il dit, que les Roies de France, sur erection de tous Vniuersities la, ont declare en leur charters, Que ils voient receiuer le Profession del Ciuile & Canon leyes pur vser a leur discretion, & nemy desre oblige per ceuz Leyes.

Des quant a ceuz Cannons queuz fueront receiue, accept, & ble en aucun Christian Realme ou commonweale, ceuz, per tiel acceptation & vsage, ont obtaine le forces de leyes en tiel particular Realme ou State, & sont deuaigne part des Ecclesiasticall Leyes de tiel Nation. Et ainsi ceuz que fueront embrace, allow, & ble en Engleterre fueront fait, per tiel allowance & vsage, part de les Ecclesiasticall leys d'engleterre. Per que, l'interpretation, dispensation ou execution de ceuz Cannons, esteant denatus leyes d'engleterre, apperteignoit solement al Roy d'engleterre, & les Magistrates, deins les Dominions, & il
s les

Le case de Commenda.

71

À les magistrates ayoent sole iurisdiction en tiels cases, & le euesque de Rome ne adrien a faire en le interpretation, dispensation, ou execution de ceuz leyes en Engleterre, comment que fuerot primerment deuise en le court de Rome. Mais ent plus que le chiefe magistrat Del Athens ou Lacedemon puilloit clamer iurisdiction en le antient city de Rome pur ceo que les leyes de les 12. Tables fueront apprompt & impoit de ceuz citiez de Grece. Et nient plus que le master del New colledge en Orford auera command ou iurisdiction en le Kings colledge de Cambridge, si ceo si les priuate statutes y que le Kings colledge est gouverne, fueront, pur le plus part, borrowe & prise hors del liure de foundation del New colledge en Orford. Et certes per cest reason, le Emperour puilloit clamer iurisdiction en Maritime causes deing les Dominions del Roy D'engleterre, si ceo que nous auomus, de long temps, receue & admit le Imperial ley pur le determinac de tiels causes, vide Cawdries case en le 5. part des Reports De le Signior Coke: & Kellawayes Reports, 184. a.

Uncoze le euesque de Rome perceuant que plusors de ses Canons fueront receue & ble per diuers nations de Chyistendome, per colour de ceo, il clamoit de auer ecclesiasticall iurisdiction en chescun Realme et State, ou les Canons fueront receue, & misoit les Legates ou seuerall commissions, en seueral realmes de Chyistendome, de oyer & determiner causes, selonque ceuz canons: queuz canons, coment que le Pape, ne les ministers, sur le premier henting & utterance, n'oseront appeller leyes, Ne committerent crimen lasse Maicstatis in Principes, come Marfil. Par. ad bñ observe libr. Defensor. Pacis, part. 2. c. 23. & dit aupp la, que ceuz canons, entant que sont fait per le Pape, neque sunt humana leges, neque diuina, sed documenta quadam, & narrationes: Uncoze quant il perceuoit que ceuz Canons fueront receue, allors, & ble en part, per seuerall nations, il compile euz en volumes, & appell euz, Ius Canonicum, & ordaine que seront lyes, & expound en publike Schooles et Uniuersities, com l'Imperial ley suis lie et expound, et commaund que seront obey per tous Chyistians sur paine de excommunication, et contend sonent soit

Le case de Commenda.

foit de mettre eux en execution per coactive pouer, & assu-
me sur luy de interpreter, et abrogater, et dispenser oue
ceux leys en tous les Realmes de Chrestendome a son
pleasure: issint que les canonists ascribont a luy cest pre-
rogative, Papa in omnibus pure positivis, & in quibusdam ad
ius diuinum pertinentibus dispensare potest, quia dicitur om-
nia iura habere in scrinio pectoris sui, quantum ad interpreta-
tionem & dispensationem lib. 6. de Const. cap. licet.

Pur le temps Anno 25. E. 1. Simon un Moigne de Wal-
den comenceoit de lier le Canon ley en le vniuersite de Ca-
bridge, vide Stow, & Walsingham en mesme le an & le Ma-
nusc. lib. 6. Decretal. en le Library Noui Coll. Oxon. ad cē
inscription in fronte: Anno Domini 1298. que fuit le An
26. E. 1. 19. Nouembr. in Ecclesia fratrum Prædicator, Oxon
fuit facta publicatio lib. 6. Decretal. p. que appiert quant le
canon ley fuit introduue en Engleterre. Mes le iurisdic-
tion que le Pape p. colour de ceo clamoit en Engleterre, fuit
un meere usurpation, a quel les Roies d'engleterre, de tēps
en temps, fesoient opposition iusques al temps del H. 8.

Et certes le Judgement del Parliament expresse en le
Preamble de cest statute & faculties est notable a cest pur-
pose. Ou est recite que le Pape de Rome ad deceue & a-
buse les subiects del Roine d'engleterre, Pretending and
persuading to them that hee had full power to dispense with
all humane Lawes, vses, and customes of all Realmes, in all
causes, which bee called Spirituall: which matter hath beene
vsurped and practised by him and his predecessours, for many
yeares, to the great derogation of the Imperiall Crowne
of England. For whereas the sayde Realme of England
recognising no superior vnder God, but the King, hath beene
and yet is, free, from subiection to any mans laws, but only to
such as haue beene deuised, made, and ordained within this
Realme, for the wealth of the same, or to such other, as by suf-
ferance of the king & his progenitors, the people of this realme
haue taken at their free liberty, and by their owne consent, to
be vsed among them, and haue bound themselves by long vse
and custome to the obseruance of the same, not as to the ob-
seruance of the lawes of any forein Prince, Potentate, or Pre-
late, but as to the accustomed and antient lawes of this realme
originally

Le case de Commenda.

72

originally established as lawes of the same, by the sayd sufferance, consent, and custome, and not otherwise: it standeth with naturall equitie and good reason, that all such humane lawes made within this Realme, or induced into this Realme by the sayd sufferance, consent, and custome, should bee dispensed with, abrogated, amplified, or diminished by the King and his Parliament, or by such persons as the King & Parliament should authorise, &c. vide 21. H. 7. 4. a. ou est dit, que certaine priests fueront depriue de lour benefices per Act de Parliament en temps R. 2.

Per que fuit conclude, que le Roy D'engleterre, & nemy le Pape, deuant le fesaius de cest Statute de faculties, pouisoit de iure dispenser ou le ecclesiasticall ley en cest, & autres cases. Car coment que plusors de nostre ecclesiasticall leys ont estre primerment deuise en le court d Rome, vncoze ceux esteant establi & confirme en cest realme per acceptance & vsage, sont oze deuenus English leys, et ne seront amplius repute Romish canons ou constitutions. Come Rebuffus parlant de regula Cancellarie Romanæ de verisimili notitia: hæc regula, dit il, vbique in regno Franciæ est recepta, & est lex Regni effecta, & obseruatur tanquam lex regni, non tanquam Papæ regula: & Papa eam reuocare non potest.

Et pur ceo, Ecclesiasticall ley que ordaine que quaut home est create en euesque que tous les inferior benefices seront boide, est souentfois dit en le case del Euesque de Saint Dauids 11. Henr. 4. desire le antient ley D'engleterre. Et 29. Edward 3. 44. a. en le Case del Præbend de Oxgate, est dit, que le constitution que ouste pluralities commencoit en le court de Rome, vncoze vn esglise fuit adiudge boide en Banke le Roy pur cel cause. Per que appiert, que depuis que cest constitution fuit receiue & allou en Engleterre, ceo fuit deuenus ley D'engleterre. Vide statutum de Bigamis cap. 5. ou le Roy & son Counsell en Parliament declaront coment vn Canon fait en le conseil de Lions serroit interpret & expound, De Bigamis quos Dominus Papa in Consilio suo Lugdunensi orami privilegio suo Clericali priuauit, per constitutionem inde editam, & unde quidam Prælati illos, qui effecti fuerunt Bigami ante prædictam constitutionem, quando de feloniam rehati fuerunt, tanquam

Le case de Commenda.

quam Clericos elegerunt sibi deliberandos : concordatum est & declaratu, corā Rege & Consilio, quod constitutio ista intelligenda sit, quod siue effecti fuerint Bigami ante prædictam constitutionē, siue post, de cætero non liberentur Prælati, sed fiat de ijs iustitia, sicut de laicis.

Uncoze tous les ecclesiasticall leyes D'engleterre ne fueront deriue & appzopt del court de Rome. Car long temps deuant que le Canon ley fuit anthozise & publiſh (q̄ fuit depuis le Norman Conquest, come deuant est monstre) les antient Roies D'engleterre, viz. Edgar, Athelstan, Alfred, Ed. le Confessor, & autres, ount, oue le aduise de leur clergy deins le Realme, fait diuers ordinaances pur le gouernmt del eglise D'englefre : & depuis le Conquest, diuers Prouincial Synodes ont estre tenus, et plusors constitutions ont estre fait en ambideux realmes D'englefre, & Ireland : tous queux sont part d nostre ecclesiastical leyes a cest iour. Vide le Chart. de William le Conqueror dar. An. Domini 1066. irrot. 2. R. 2. enter les Charters in Archiu. Turris London. pro Decano & Capitul' Lincoln Willielmus Dei gratia, Rex Anglorum, &c. Sciatis, &c. quod Episcopali leges, quæ non bene, nec secundum Sanctorum Canonum præcepta, vsque ad mea tempora in regno Angliæ fuerunt, communi consilio Episcoporum meorum, & cæterorum Episcoporum, & omnium principum regni mei emendandas iudicaui. &c. vid. Girald. Cambren. libr. 2. cap. 34. en temps Henr. 2. un Synode del Clergy de Ireland fuit tenuis al Castle, en que fuit ordaine, Quod omnia diuina, iuxta quod Anglicana obseruat Ecclesia, in omnibus partibus Hyberniz amodo tractentur. Dignum enim & iustissimum est, vt sicut dominum & Regem ex Anglia diuinitus sortita est Hybernia, sic etiam exinde viuendi formam accipiant meliorem.

Et pur ceo les Roies D'engleterre, de temps en temps, en chescun age deuant le temps del Henr. 8. ount vse de graunter dispensations en causes Ecclesiasticall. Car ou la ley del Eglise est, que chescun spirituell person est visitable per le ordinary, le Roy William le Conquerour per son charter exempt le abbej de Battell de visitation & Jurisdiction del ordinary, en ceux expresse parols, sitque dicta Ecclesia libera & qujeta imperpetuum ab omni subiectione Epif.

Episcoporum, & quarumlibet personarum dominationes, sicut Ecclesia Christi Cantuariensis, &c. per que il dispense oue la Ley del esglise en cest case, vide libr. de vera differentia regie potestatis & Ecclesiasticæ, edit. 1534. ou tout le dit chart est recite alarge. Et tiel charter fuit graunt al abbey de Abingdon p le roy Kenulphus, 1. H. 7. 23. & 25. & Cawdreys case 5. fol. 10. a. Ilint chescun appropriation compzist en ceo vn dispensation al person impersonne, bauer & retainer le benefice en ppetuitie, come appiert en Grendons Case, Pl. Comment. 503. en ql act le roy p le common Ley fra tout foits actoz, non solement come supzeame patron, come est auy note en Grendons case, mes auy come supzeame Ordinary. Car le Roy sole sans de Pape poet fait appropriation, 7. Edw. 3. Fitz. Quare impedit 19. ilint en le dit case del euesque d S. Davids, 11. Hen. 4. fol. 213. b. Hankford. mist cest question si le Roy vlt graunt, buant le creation d euesque, que il purroit ten vn benefice & l euesque ensemble, si come l Apostle ad fait, ne serra my le graunt bon & Norton & Skrene bon assets. Ilint en 11. Hen. 7. 12. a. en le case de malum prohibitum, & malum in se, est la tenus, q l roy poet dispenser oue vn Priest d ten 2. benefices, & oue vn bastard que il serra Priest, nient obstant les ecclesiasticall leys qur sont al contrarie. Et sicome il poet dispenser ceux leys, & sint il poet pardon tous offences encounter ceux leys, et son pardon est bar est tous suits p salute animæ, ou reformatione morum, & tous suits ex officio en l ecclesiasticall court, Halls case en l 5. pt d les Reports d Seignior Coke fol. 31.

CEst point donques esteant ilint prouue, viz. que le Roy d'engleterre solement puilloit de iure dispenser oue l Ecclesiasticall ley en cest case, & auters deins ses Dominions. Deuant l felans del Statute d faculties, l effect & validitie de cest facultie ou dispensation esteant graunt vt supra fuit consider. Cest faculte fuit graunt per commissioners authoize p Letters Patents del Royme Elizabeth. de grant faculties & dispensations en ce realme accordant al Statut d 28. Henr. 8. cap. 20. enacted en cest Realme. Per quel Act tiels commissioners ont meisme l autho-

Le case de Commenda.

L'authority que l'Archeuesqz d'Canterburie ad en Engleterre p force d'l Statut d' 25. Henr. 8. cap. 21. enacted en Engleff. Quel Statute d' 25. Henr. 8. done authority al Archeuesque d'Canterbury d' graunt toutz faculties & dispensations, &c. p causes nient contrary ou repugnant al Saintes Scriptures & ley d' Dieu qur ont vse en temps parauant destre ew & obtaine en la Court de Rome: & toutz autz faculties & dispensations q' serrent p le honour del Roy, & profit d'l realme, issint q' soient p causes que ne sont repugnant al Leys de Dieu. Et que toutz acts destre fait & executed accordant al Tenor d' tielz faculties & dispensations, sront firme, & remaineront en force nient obstant asc' forrein Ley, Decree, Cannon, ou Decretall, &c. p q' appiert, quel pouer & authority ceux commissioners auoent d' grater faculties & dispensations. Mes ne appiert q' ils auoent pouer d' grant ascun facultie ou dispelation en tiel forme come l' facultie supza est plead dest' grant al euesqz d' Ossorie. Car cest faculty nest garrant p l' dit Statut, p 2 p'ncipal reasons.

1 Pur ceo que nul tiel facultie ou dispensation fuit accustomed dest' graunt en le court d' Rome. Car les faculties graunt la, fueront d'aut forme, & different de cest faculty in difis materiall points: issint que cest faculty, si ceo ad est' obtaine en le court de Rome, ad est' boyd p le rule del Canon Ley.

2 Admit q' tiel faculty ad vse dest' grant en le court d' Rome, vncoze le cause p q' c' est graunt est repugnant a les saintes Scriptures & ley de Dieu, & p consequence, nest, en ascun sozt, garrant p le dit Statute.

1 Pur le forme de cest faculty q' est tiel, viz. que l' euesque d' Ossory vnum vel plura beneficia, curata vel non curata, sui, vel alieni iurispatronatus, ad tunc vacantia, vel quæ impoſterum vacare contigerint, & non excedentia, &c. perpetuæ commendæ titulo adipisci, occupare, retinere, omnesque fructus ad familiæ suæ sustentationem conuertere possit: iuribus siue institutis quibuscunq; in contrarium non obstantib'. Ceo est trop geniall, & pur ceo est irregular, & fault certain materiall clauses, queux fueront toutsoits mise en tiels faculties esteaunt graunt & obtaine en le Court del Rome.

Car

Car in tielx faculties grant la fuit, toutzfoits vn particular derogation, ou non obstante del droit d patronage des lay patrons, & del droit del Roy p expresse nosme, ou patronage appartient a luy autermēt le faculty ad estt void (car p le Canon ley les lay patrons doent estt appell d don leur consentz in toutz cases de cest nature & si tiel particular: Non obstante ne fuit add in le faculty, vn aut clause fuit mise, viz. Dummodo patronorum expressus accedat consensus. Aury p vn auter clause, authoritey fuit toutzfoits done al official, ou Archdeacon, ou auter ecclesiasticall Minister de metter cestz a que le faculty est grant in possession d benefice cum accederit. Ou in cest faculty graunt al Cuesq d Ossoy, & est nul particular Non obstante ou derogation del droit de patronage, ne d Roy, ne d autres lay patrons, ne aucun mention fait de consent d Roy, ou del aucun auter patron. Aury p cest faculty cestz que ad obtain ceo ne besoigne destt mise in possession p aucun Ecclesiasticall Minister, mes il poet, come semble, pzender le possession del aucun benefice que serra void, de soy mesme, immediatmēt, & quasi per saltum, sans presentation, institution, ou induction, & sans aucun aut formall ou legall collation.

Et a prouer q l's clauses auantdit fueront toutzfoits mise in tielx faculties grants ou pchase in le court d Rome, Rebuffus de Praxi beneficiorum (vn tresbon authoritey a cē purpose) fuit bouch: ou traitant alarge de Papæ prouisionibus, il dit, quod cum Iurispatronatus laicis à iure reseruātū sit, ob id Papa non solet conferre beneficia sub Iure patronatus laicorū existentia, nisi cum speciali derogatione iurispatronatus laicorū, & nō est suæ intentionis, vt valeat collatio nō facta speciali derogatione, vt dicit Io. Andreas (q fuit vn antient canonistz long tēps deuant le Statute de faculties) se de hoc vidisse Bullā directam Prælati Angliæ (quod nota) alias prouisio Papæ tanquā subreptitia non valer, quia citra intentionē Papæ. Et ouster il dit, quod clausulæ generales derogatoriæ non sufficiunt, ad derogationē Iurispatronatus laicorū, etiamsi adesset clausula motus proprii, & generalis clausula, non obstante (come est en cest faculty) aut clausula, ad quamcunque collationem, præsentationem, vel prouisionem pertineat, quia

Le case de Commenda.

illa verba intelligerentur de Clericis, non de laicis. **Il auxy dit**, quod specialis mentio Regis fieri debet, quia si prouisio a Papa facta fuerit non obstante Iure patronatus laicorum, si spectaret ad regem, non valeret prouisio, & Rex se opponere posset. **Uncoze il dit**, que cest special non obstante ne besoigne, si cē conditionall clause soit mise en le prouision, dummodo patronorum accedat consensus.

Et est destre note, q̄ commenda est quādā prouisio, & pur ceo **Gomes in regula de Idiomate, dit**, qd̄ commendare est prouidere, & q̄ commenda comprehenditur sub quibuscunque regulis de prouisione loquentibus.

Et que per le canon lēp le cōsent del patron est requisite, ou benefice est done en commendam, vide lib. 6. Decretal. cap. Nemo, ou le **Glosse dit**, Ad commendā vocabitur patronus, & si qui alij ex tali commenda lāduntur. Et in legitimis constitur. **Othobon. titul. de commendis** (q̄ux constitutiōs sont annex al Linwoods prouincials) est dit, quod consensus patroni ad huiusmodi commendā requiritur. **Et p̄ mesme le reason en chescun faculty**, ou licence grant p̄ le Pape de faire permutation, vnion, ou appropriation des esglises, ceux parols fueront ad tout sfoits, vocatis quorum interest que entent p̄ncipalment del patron come **Rebuff.** & les auls canonists dient, & que vnion & appropriation ne serront fait sans assent del Patron est manifest per nostre liuers, viz. 11. H. 7. 8. 6. H. 7. 13. 46. Aff. p. 50. Ed. 3. 26. 40. Ed. 3. 28. Grendons case Plow. Com̄ 498. a.

Il prouet auxy, que en chescun tiel faculty graunt per le Pape de auer & retenir beneficium vacans seu vacaturum, un clause excecutoz fuit tout sfoits mise, per que le official, ou Archdeacon, ou auter ecclesiasticall minister fuit authorise de metter cesty que ad tiel faculty graunt a luy en cozpozall possession de tiel benefice. **Rebuffus fuit cite**, ou il declare le forme de cest faculty, & la il dit quod intrusus dicitur, qui intrat beneficium propria autoritate. Car il ne enter en loyal manner, & ideo non intrat per portam. **Et accozdāt a ceo Hankford, dit**, 11. H. 4. 229. a. q̄ si home ad obtaine Bull de prouision, il ne ad excecutoz de son Bull, queux luy purront metter eins p̄ authorite, & per course del ley, ne serront ad iudge eins p̄ prouision del Pape, mes intrudoz.

Per

Le case de Commenda.

75

Per que appert que cest faculty graunt al Cuesqz d'Os-
sory d'arant en divers material points d'home d's facult-
ties graunt en l'Court d' Rome d'uant l' f'elms d' Statut
d' faculties, & pur ceo nest garrant p' le dit Statute en cest
respect.

Admit que tiel faculty fuit b'se & accustomé d'estre
graunt & obtaine en le Court de Rome, b'ncope, nest gar-
rant per le Statute. pur ceo que le cause de cest faculty
nest agreable est al sainct Scripture & Ley de Dieu. Car
ou l'expresse text d' Scripture est 1. Timoth. cap. 2 quod oport-
ter Episcopum esse Doctorem & Hospitalem: experientia
docet (dit Innocent. 6. Extravagan. ca. Pastoris) occasionem
commendarum, Cultum diuinum minui, curam animarū neg-
ligi, hospitalitatem consuetam & debitam non seruari, ruinis
ædificia supponi, &c. Et ou est dit en mesme l' Text, que C-
uesque terra vnius vxoris vir, per que est entend (come les
Canonists expound ceo) que il auera f'elms b'n Cuesche-
ry, ou b'n Cure, ils dient que per commendam Bigamia
contrahitur in Ecclesia. Et pur ceo b'n bon & pious Cues-
que disoit, quant b'n autre Benefice fuit offer a luy a te-
ner en commendam) absit, & cum sponsa habeam concubi-
nam.

Mes p' nostre Ley, b'n faculty graunt & execute en tiel
foyme come l' faculty graunt vsupra al Cuesqz d' Ossory est
faicet manifest toyt & inuirt aux lapes Patrons. Car est
expresse licence done al Cuesqz d' fait v'surpation sur lapes
patrons, & d' tollet l' benefice d' leur Adoullans estant leur
droit & inheritant. Et ceo estant toyt est malum in se, & en-
contre la ley de Dieu: & p' ceo ne p'ussit est dispensed with
d'uant l' Statut, ne p' l' Roy, ne p' l' Pape, & oze tiel faculty ou
licenz nest confirm ne intend estre confirme p' l' Statut de
faculties.

Et pur ceo quant al Roy est dit, 11. Henr. 7. 12. 3. que le
Roy ne poet dispenser oue aucun d' faire nullance en le hault
chimin, & al ceo fait, tiel dispensation est void, & 8. Hen. 6.
19. Roy ne poet graunt que si home fait trespas a moy,
que leo f'auera action vers luy: ou que home terra son
Judge demesne. Et pur ceo est souentfoys dit en nostre
l'ettes, que prerogative del Roy ne f'aita Toyt al subiect

Le case de Commenda.

*Le pout d'offense ou
stat. requise chose n'est
pas d'it.*

13. Edw. 3. 8. 435. H. 6. 29. b. 5. Coke 55. b. Knights Case. Juri coment que le Roy poet dissenter ou un Statute q^u meubit indifferent chose d'est fait, vncor il ne poet chang^{er} le common Ley n^{on} l'on p^{ou}ent. 37. Hen. 8. B. 4. Dat^{es} 100. 6. Henr. 7. 4. Et ne poet dispenser ou le common Ley oue Non obstante 4. Coke 35. Bozoms case. Et quant al Pape est souentfoiz dit en le dit notable case del Euesque de Saint Davids, 1. Henr. 4. q^u les Bulls del Pape ne poet chan- ger la Ley d'engleterre. Et ceo accord^{er} oue les rules d^e Ca- non ley. Non valet declaratio Papæ vel Regis in præiudicium tertij. Rebuffus in praxi beneficiorum titul. de non tollendo ius quisitum. Et alibi il dit, per clausulam motu proprio, &c. Pa- pa non tollit ius tertij. Talis psumitur mens Papæ conceden- tis, qualis est juris. Donatio Principis intelligitur, sine p^{re}iudicio tertij.

Si donq^{ue} tiel faculty, ou dispensation en tiel forme ne p^{ou}roit estre graunt per le Roy ne per le Pape, deuant le Statute de faculties, certes les seignors de cest Statute ne b^unques entendoent de faire aucun Faculty bone, que fust- soit unreasonable, & encounter common dro^{it} deuant le Statute. Come les Statutes queux confirment les customes de London ne confirment aucun unreasonable custome que ad estre ble en London. Et issint come Lit. dit 165. a. le Statute de Glocester ferra entend. que pro- uide, que si baron esteant seise de terre en dro^{it} la feme alien la terre oue garrantie en la vie del feme, ne ferra barre al heire del feme, si nul fine soit leue en le court del Roy: ceo est desre entend & expound si nul loiall fine soit droiturement leue en court del Roy en que le Baron & feme toyuant. Car si fine oue garrantie soit leue per le Baron sola sans la feme & ne si barf al he^{ir} si f^{er}.

Mes pur faire cest point vncor plus cleare, le nature & difference de les Commenda's warrantable p^{er} le Canon Ley fueront declare & consider. Et quant a ceo, fut dit quod commenda Ecclesia, & rien forsq^{ue} commendatio Ec- clesie ad custodiam alterius. Et pur ceo Decret. causa 1. q. 1. titul. qui plures, le Glosse dit, commendare nihil aliud est quam deponere. Cest commenda seu commendatio Ecce- lis est diuers, selonque le nature del Eglise, et le limi- tation

tation ou continuance de le commenda. Car commenda poet estre Ecclesia Curata vel non Curata, & poet estre Temporeanea, viz. pur temps certaine, come pur 6. mois, ou perpetua, viz. Durant le vie del commendatary. Eglise ou cure ne poet estre donee en commendam, si ne soit pur evident necessity, ou moult del Eglise, viz. de supplier le Cure tantque provision soit fait del sufficient incumbent. Et pur ceo fuit providee per le Counsell de Lions, que un Parochiall Eglise ne serroit donee en commendam, nisi ex evidenti necessitate vel utilitate Ecclesie, & quod talis commenda ultra semestris temporis spacium non duraret, & qd secus factum fuerit sit irritum ipso iure, &c. 6. Decretal. c. Nemo. Mes benefice sans cure poet estre donee per le Canon Ley pur sustentation del Commendatary vel ad mensam. Et en cest sence les Canonists dient, quod Commenda est quasi comedenda, quia Ecclesia quae traditur in commendam quasi comeditur & deuoratur. Et tel benefice proprement poet estre donee en perpetuam commendam. Summa Iummarum titulum. Commenda, articulum. 1. & 2. Per qd appiert, qd il dit vicarage estant benefice ou cure ne poet estre donee en perpetua commendam p le Canon auantdit. Et comist qd il Glosse si il dit Canon. 6. Decretal. cap. Nemo, dit quod ista constitutio non comprehendit Romanum Pontificem, ideo Romanus Pontifex potest in perpetuum commendare, vncor appiert auant qd qd est monist ouant, qd il Pape ne vloit ne pouloit don comenda en tel form come il faculty ou dispensation auantdit & donee, p qd fuit conclude qd cest faculty ou dispensation fuit boyd a tous intents.

Mes admet que cest faculty prendroit effect & serroit perpetua commenda, vncor ceo ne fait il. Quelque perpetuum vicarium, issint qd soit pfect Incumbent del dit Eglise, & que l'Eglise soit pleine de luy durant son vie.

Car per le rule de nostre Ley, un Eglise ne terra dit pleine vers common pson si il incumbent ne soit eins per presentation, institution, ou p formall collation qd amouint al presentation & institution. Mes vers l'Roy terra nul plenary sans presentation, institution, & induction, 22. Hen. 6.

Le case de Commenda.

27.44. Ed. 3. 3. 1. Henr. 4. 7. 24. Edw. 3. 30. Et pur cest rea-
son un pson en personnee ne plezra plenarty des estrange
patron, pur ceo que il ne vient ens per presentment, 38.
Henr. 8. 20. 39. Henr. 8. 21. 48. All. pl. 4. 14. Henr. 8. 30. Vide
auy le Statute Westm. 1. cap. 5. p. que cest que plead ple-
narym Ecclesie doit monstrier b quel presentment. Et
en Heekers Case, 13. Henr. 8. 12. ou malher del hospitall
ad preser luy mesm al Eglise: b que l'Ordination on appet
al dit hospitall, coment que l'Ordinary ad luy admi. on-
coz fuit aduidge la, que l'presentation essant void, nul ple-
narty fuit gain p luy en l' dit Eglise: a fortiori en cest case,
cest Vicarage ne terra dit plein ol Quelque b Offory, ou il
mesm ent, s pnt possession b e, sans est unqs preser, insti-
tat, ou induct, s sans ordinary collation, ou aucun legal ce-
remony.

Et p ceo p l'rule ol Canon ley auxi, cest q vient ens per
commendam non est Prælatus, sed procurator tantum, & est
nisi custos, seu administrator, & jus in ecclesia non habet, 6. De-
cretal. cap. Nemo & constituit. Othoboni cap. de Commendis
Ecclesiarum fol. 65. Et one ceo accord, 27. Henr. 8. 15. ou est
dit q l'Cardinall de Yorke ad l' Abby b S. Albons en comen-
dam, s uncoz ne fuit Abbe.

Uncoz cest differenc fuit agreee, q si clerk soit preser al
benefice one ture, s soit admi. institute, s induct a ceo, issint
q l'Eglise soit plein b luy, si abs il soit plen al aut benefice
incompatib, ou elect al Quelqre, s quant q il soit institut
al second benefice, ou soit create en Quelqre, il obtain faculty
ou dispensation b retaisi l' pmi benefice perperua commenda-
ritulo: q est durant son vie, cest faculty ou dispensation fra b
cel effect, q l' premier benefice ne fra void p l' accepta. al
second, ou p l' promotion al Quelqre, mes que il remaine-
ra plein s perfect Incumbent del premier benefice duraut
son vie.

Et le faculty ou dispensation en cest case ne fait aucun
Fort ou injury al Patron. Car le Patron ne presente-
roit arrete tantque le prochain auoidance, s l'Eglise en
cest case ne deuent unques void, per reason del dispensa-
tion, que preuent l' auoidance. Vid. Rebuff. de praxi bene-
ficiorum. 3. part signatur. Si Papa dispensat cum promotio ad
Episcopatum

Episcopatum vt retineat sua beneficia, poterit retinere etiam que sub patronatu laicorum sunt, quia non agitur de præiudicio Patroni, cum non vacet beneficium, q̄ ad estre adiudge dit il, in Decis. Rotæ. 331. Car la ley que ordaine q̄ le p̄mier benefice sera void p̄ acceptance del second, poet estre dispensed with, & issint est de la ley que ordaine q̄ quant home est fait euesque, que ses auters benefices seront void, come Thringing dit, 11.H.4.213.b. Car ceux leyes fueront faits per ecclesiasticall policy, & p̄ ceo m̄ le policy poet dispenser oue ceux leyes. Mes la ley que prohibit Tort ou iniury al tierce person, ne poet estre dispensed with p̄ les raisons auant dit. Et pur ceo le benefice q̄ est vnfoits void, & le prochein auoiance de ces eschue al Patron, ne poet estre prise & occupy p̄ vertue del ascun tiel licence ou faculty. Et accordant a cest difference sont plusors cases ruled in nostre liuers.

11.Henr.4.170.213.229. en le notable case del euesque de S. Dauids souentfoits cite deuant, est resolu p̄ Thringing, Hankford, & le melior op̄ion de cest liuer, que quant vn p̄bendary de Sarum fuit elect al Euesquery de Saint Dauids, & deuant que il fuit create en Euesque, il obtaine dispensatiou del Pape de retainer tous les auters benefices nient obstant, &c. Et apres il est create & consecrate Euesque, que le roy en cest case n'aiera Quare impedit vers l'Euesque pur le p̄bend, ne action sur le Statute de 25. Edw.3. que done p̄sentment al Roy, ou le Pape per p̄uision done ascun benefice dont le Patronage appent al spirituall person. Car en ambideux cases il couient estre vn auoiance del benefice deuant que le Roy poet presenter, ou en cest case deuant, l'Eglise ne deuient void, mes l'incumbent continue eings de son eigne title. Et pur ceo Hankford la dit, que l'Euesque, sur cest dispensatiou de retainer, ne paiera first frutes arrears pur cest benefice. Et si le Roy ad p̄mier & prochein auoiance d'un benefice, & apres graunt tiel faculty ou dispensatiou al incumbent de retainer cest benefice, nient obstant que il serroit create en Euesque, & apres l'incumbent est fait l'Euesque, vncoze ceo ne amount al p̄sentation, mes que apres le mozt del incumbent le Roy presentera vn auter Clerke a ceo: car nul aboy.

Le case de Commenda.

auoidance fuit de cē benefice, Deuant le mozt del incumbēt : mes de aut part fuit cleerement resoluē en le dit case del euesque d Saint Dauids, que si le dispensation ad estre fait apres que le prebendary vst est create euesque, q le prebend ad est void, & nul faculty puisset luy ennabler de retainer ceo enuers le roy.

Et p̄ en temps H.6. quant Henry Beaufort grand vncl del roy estreant euesque de Winchester fuit fait Cardinal, & apres ceo il purchale d̄l Pape vn Bull declaratoz, q nient obstant q il fuit fait Cardinall, que son euesquery de Winchester ne fuit void, p̄ que il puisset c̄ retainer come d̄uant : vncoze fuit tenus que l̄ Sea d̄l Winchester fuit void p̄ l̄ assumption del Cardinalship, q̄ exempt l̄euesq̄ del iurisdiction de son Metropolitan. Et p̄ ceo le Cardinall fuit en case de Præmunire, p̄ que il purchale son pardon que est dest̄ trouē enter les Charters, 4. Hen. 6. in Archiuis Turf London. 6. & 7. Elizab. Dier 233. a. Io. Packhurst estreant elect al euesquery d̄ Norwich, deuant q̄ il fuit create euesque, obtaine dispensation d̄ Archeuesq̄ de Canterbury (p̄ vertue d̄ statute d̄ faculties) de retainer vn personage, que il auoit d̄uāt, in commendam, protribus annis, viz. a festo sancti Michaelis in Anno Dom. 1560. vsque ad idem festum que serroit en l̄ An. 1563. Deuant le p̄mier feast d̄ Saint Michael, Packhurst est create euesq̄, & puis il resigne le benefice : & le question fuit, si cest benefice vacauit p̄ resignation d̄l Packhurst, ou p̄ son promotion al euesquery : & fuit adiudge, q̄ l̄ esglise se boida per son resignation : que proue que per vertue del dit dispensation il continue person tant que il ad resigne, Vide Natū Bf 36. h. si person que ad dispensation d̄ tener son rectory, soit cree en euesque, & puis le patron p̄sent aut incumbent que est institute, & induct, oze l̄ euesq̄ auera spoliation d̄s cesty incumbēt, que proue, que son reall possession in le personage tout s̄toits continue p̄ vertue del dispensation. Mint que faculty ou dispensation a tener benefice in perpetuam commendam est bon & effectuell a t̄iel person tantum que est plein & p̄fect incumbent al temps del dispensation fait a luy, & nemy a cesty que nad riens en le benefice.

Ceo appiert auxy p̄ Hollands Case en le 4. part de les Reports

Reports del Seignior Coke 75. Car la 10. May aiant le Parsonage de Northreake, que fuit ouster l'annuel value d'8.li. accept auf benefice incompatible, issint q' l'p'ri' benefice fuit void. Ap's il fuit elect al enesq'rie d' Carlile, & duant son creaç, il obtain faculty d' retenir l' Parsonag d' Northreake in commendam, & fructus & emolumenta ad v'sus suos conuerrere, &c. Uncoz fuit adiudge, q' cest faculty ne luy aidera p' l' benefice q' fuit void, car il ne fuit p'son al temps del dispensation graunt a luy.

Ameine l' intent est Dygbies Case en le 4. des Reports del Seignior Coke 79. vn Merrick Parson d' Norton, que fuit del annuel value d' 8.li. fuit p'sent al esglise d' Stanes & admitt, & institute a ceo, p' q' l' institution l' p'ri' Benefice fuit void, vncoz duant induction, il obtaine qualification & dispensation, Ecclesiam de Stanes recipere, & retinere quoad vixerit, &c. Uncoz ceo vient trop tard d' p'seruer le p'ri' Benefice, q' fuit void duant, Vid. 18. El. Dycr 347. Doctour Westons case.

Sur tous ceuz raisons & authorities ils concludont, q' cest faculty ou dispensation d' p'nd vn void Benefice en perpetuam commendam fuit void. Mes si benefice soit plein de incumbent, faculty poet estre graunt a cest incumbent d' retenir in perpetuam commendam, nient obstant q' il p'ist auf benefice incompatible. Et p' l' les Bulls d' prouision grant p' le Pape, q'ux fueront en nature d' faculties d' p'nd beneficia vacantia, vel vacatura, ne vnq's fesoent l' prouisor able d' p'nd & occuper vn Benefice que serroit boyd d' la teste d'mesin, sans institution, admission, ou induction. Car sil ad enter en tiel manner, la Ley h't adiudge luy abatoz & disturboz, & Quare impedit g'isoit vers luy. Mes si tiel prouisor ad estre admitt, institute, & induct, donq's serroit remouue p' l' estatut de Prouisoribus, 29. Edw. 3. 4. 4. 3. & 11. Henric. 4. 21. 3. 22. 9. Mes le Roy remoueroit tiel Prouisor p' Quare impedit, ap's institution & induction, 19. E. 3. Fitz. Quare non admisit 7. 8.

Et issint ho'z de tout ceo que est dit deuant, result cest difference enter faculty de prender benefice, & faculty de retenir benefice, viz. que faculty grant al vn que n'est incumbent de prender vn void benefice, est void: & faculty al vn que

Lecase de Commenda.

que incumbent de un benefice, de retainer mesme le benefice, est bone. Et per consequence cest facultie grant al Euesque de Ossory estant void, le Vicarage auantdis ne fuit unques plein de luy, per q e le Roy ad bone title a presenter a ceo per laps.

MEs del autre part, fuit argue per le Counsell des defendants 1. que cest facultie grant en le forme a-
bautdit, fuit bone, & doit estre approue & allowe pur bone en cest court 2. que cest facultie fuit bien executee per le entry del Euesque en le Vicarage sans aucun presentation institution, & induction. 3. Que l'euesque aiant enter & occupé cest benefice p vertu de cest facultie, le eglise fuit fait plein de luy, issint que null title pouoit de boluer al Roy per lapsum temporis durant le vie del euesque.

Quant al premier point, ils arguent, que cest facultie fuit bone, & doit estre allowe pur bone in cest court, pur ceo que est bien garrant per un positive Ley del Reame, viz, per le Statute de 28.H.8.cap. 20. per que les Commissioners ont pouer & authority a doner & graunter per leur discretions, tiels dispensations, licences, ou faculties p causes nient repugnant a les saint Scriptures, & leys de Dieu, come en temps parauant ont estre ble & accoustume estre en obtaine al See de Rome: & que chescun dispensation, licence, ou facultie graunt per vertu de cest act, sera approue p bon & effectual en ley en tous courts & jurisdictions eibis Spiritual & Temporal. &c.

Et a proff, q cest facultie ou dispensation grant al euesque de Ossory fuit bien grant p l' dit act & Parliamt, fuit mise, 1. q tiel facultie ou dispensation fuit ble & accoustume estre grant & obtain en l'court & Rome suant l' fessans & cest Statut: 2. q la cause p q cest facultie ou dispensation est grant n'est repugnant ou contrary a la saint Scripture ou ley d' Dieu, 3. q l' facultie en cause de ceo n'est unreasonable, ou meruit encombrement lez mes est agreable, & poet bien estoier, ou les rules de la ley d' engleterre.

Et p monst que tiels faculties ou dispensations ont ble estre graunt en le Court de Rome, deuant le Statute, l'original del Commenda fuit premierment enquire. Et fuit

fuit dit, que le Pape Leo. 4. Anno Domini. 848. aut eo circiter **primermet** inbent le Commendam. Come appiert libr. Decretorum causa 23. quæst. 2. **ou est dit**, vnde Leo 4. scribit, qui plures Ecclesias retinet, vnam quidem titularam alterã vero sub commendatione tenere debet. **Car ou per les auncient Canons & Counsells**, vn home ne pouoit auer forsque vn benefice, & vncor per experience fuit trobe conuenient que aucun foit, viz. en case de necessite ou vtilite del Eglise vn home aueroit le charge & les fruits de plusieurs benefices, cest distinction fuit inbent & allowe, que comment que home naueroit forsque vn benefice in Titulo, vncor il pouoit auer auter benefice in Commenda, viz. que auter benefice pouoit estre commend & commit a son curiod & cure, tantque vn able incumbent fuisse provide pur ceo.

Mes apres, grand abuse esteant trobe en le graunting de ceux Commenda's per les Ordinaries (car omnium rerum, quarum est vsus, potest esse abusus, virtute solum excepta, dit. Aristotle) vn auter Canon fuit fait en le Counsell de Lions Anno Domini 1274. pur reformation de ceo, come appiert libr. 6. Decretal. de Elect. & Elect. potestat. cap. Nem. Nemo deinceps parochialem Ecclesiam alicui non constituto in legitima ætate, vel sacerdotio commendare præsumat, nec tali, nisi vnam, & euidenti necessitate vel vtilitate Ecclesiæ suadente. Huiusmodi autem Commendã rite factam declaramus vltra semestre temporis spatium nõ durare, &c. **Mes la glosse la dit** (come est monstre devant) ista constitutio non comprehendit Romanum Pontificem; ideo Romanus Pontifex potest perpetuo commendare, issint que le Pape, nient obstant cest Canon, ad power de doner benefices in perpetuam Commendam.

Et reuera de puis ledit Counsell de Lions, sicome le Pape ad reserve a luy meisme le sole power a doner benefices in perpetuam Commendam, issint il reduloit cest power in actum, & bloit & practisoit ceo en tous Realmes de Christendome. Specialment les Papes queux fueront resident al Auignon en France, en le temps Henr. 2. Ed. 1. Ed. 2. E. 3. fueront fort liberal, non solement en graunting des Provisions (encounter queux nostre statutes fueront fait en temps Ed. 1. & Ed. 3.) mes en donant tous sortz d' Eccle-

hile

D

asticall

Le case de Commenda.

siasticall benefices in Commendam perpetuam. Et coment que p^rimement ceo fuit fait pur supporter le dignitee des Carinales, come fuit p^rofesse per le Pape Clement. 6. en son Epistle al Ed. 3. que est en le histo^ry de Walsingham fol. 150.b. Uncoz apres, ceuz Graces fueront purchase per auters Ecclesiasticall persons de tous degres, en tous nations de Chrⁱstendome, Et specialment en Engleterre, & Ireland. Car domesticis exemplis abundamus en cest point viz. que tiels faculties ou dispensations a tener Ecclesiasticall dignities & benefices in Commendam perpetuam fueront graunt & obtaine en le Court de Rome.

En temps Henr. 3. viz. Anno Domini 1253. Matth. Paris. histor. magn. 84. 8le grand Clerke Rob. Groshead Evesque de Lincoln, que se opposoit fortment encounter les p^rouisions del Pape, complain la de cest nobel p^rouision per boy de Commenda Ceterum, dit il, quod videre non consuevit, concedit Papa, vt aliquis Episcopatum obtineat, nec tamen Episcopus existat, sed electus sempiternus. Et per mesme cesty Matth. Paris. en mesme l'histo^ry 914. est reco^rd, que Anno Domini 1257. Egidius de Bridleford Electus Sarisburiensis, manifestauit palam, quod Romæ strenuè impetrauerat, vt scilicet liceret ei pristinos redditus retinere, ac etiam Decanatum, quod nuper nouum habebatur, sed iam toties permissum nulli stuporem generauit.

Après ceo, appiert per le li^ber 41. Edw. 3. 5. que vn W. atant vn Prebend en le Cathed^rall Eglise de Sarum, & que le Pape, devant son consecration, ad done a luy ses benefices queuz il avoit devant, & le Roy recitant cest done del Pape ad graunt a luy ses tempozalties, sur que fuit adiudge que cest Prebend ne debient void, mes que l'Evesque retiendra ceo apres son consecration.

Il appiert auri en le dit Case del Evesque de S. Dauids 11. Henr. 4. sobent folz cite devant, que en temps del Edw. 3. Edmund le Moigne de Bury, que fuit attendant en le Court del Edw. 3. avoit plusors benefices per tiel dispensation, come est noate la per Thurning. fol. 229. b. Auri Hankford dit en mesme le Case fol. 191. a. que il ad estre bieto, que vn home ad estre Abbe de Glastonbury & Evesque auri son autre Eglise simul & semel, & avoit le possession sur plus dignites a vn mesme temps.

Auri

Auxi le dit principall Case en 11. Henr. 4. monstre, que Henr. Chicheley (que fuit apres Archevesque de Canterbury) esseant un prebend en le Cathedraall Eglise de Sarum, fuit elect Evesque de Saint Davids, & debant son consecration, le Pape recitant per son Bull, que il fuit elect Evesque de Saint Davids, graunt a luy faculte & power de retenir & enioier tous les autres benefices; tantque le Pape ad autrement ordain. &c. vid. Non. Decision. Rot. 331. meisme ceste point, que fuit argue 11. Henr. 4. bien debate, non.

Et que ceuz faculties ou dispensations a tenir benefices in Commendam facront graunt en le Court del Rome en temps del Henr. 5. appiert en Linwood lib. 9. de Præbend. cap. Audistis. verb. Dispensatione. En temps Henr. 6. Henr. Beaufort le grand oncle del Roy, esseant fait Cardinal obtaine dispensation del Pape de retenir l'Evesquere de Winchester en Commendam, come debant est monstre, & comment que fuit tenuz adoniques que cest dispensation velt noit trop tard esseant graunt apres que l'Evesque fuit create Cardinall, oncoz apres, en temps Henr. 8. le Cardinall Wolsey aiant debant que il fuit create Cardinall, obtaine Bull del Pape de retenir l'Archevesquere de Yorke come perpetuall administrator, & l'Abbay de Saint Albons en perpetuam commendam, il reingnoit anibideuz durant son vie, per vertue de cest dispensation vid. 27. Henr. 8. 15. b. c.

Per ceuz exemples & auctoritez est manifest, que debant le fessans de cest Statut de faculties, tiels dispensations fueront eu & obtaine en le Court de Rome, a tenir in Commendam Ecclesiasticall benefices en Engleterre.

Et quant a cest Realme de Ireland, ceuz dispensations de Pape fueront cy frequents, que en temps Edw. 4. un special act de Parliament fuit fait encounter les Commendams graunt per le Pape al Ecclesiasticall persons de cest Realme, vid. l'estatut de 7. Edw. 4. cap. 12. per que il est recite, That now of late diuers men of holy Church suing to the Court of Rome, haue purchased Bulls from the holy father the Pope, to haue as well Abbeyes, Priories, and other dignities, as Personages, & Vicarages in Commendam, to the extinguishing of diuine service, &c. per que il est ordainé, That whosoever man of holy Church doe purchase any manner of dignity, Personage, or Vicarage by Bulls of the Pope, to hold in

Le case de Commenda.

Commendam, and the said Bulls, Perfonages, or Vicarages do accept; he shalbe out of the Kings protectiō, &c. And that no pardon or licence of the King made, or to be made, bee away-
leable in this behalfe, but be vtterly voyd, if it bee not by act
of Parliament. Et cest speciall act encounter les Commē-
dams del Pape fuit fait en cest Realme pur ceo que les
Statutes faites encounter Prouisoys en temps Edw. 3.
parlont tant solement de Reseruatiōs, Collatiōs, & Proui-
sions del Pape queux parols n'extendont al Commendams
come Hankford tient 11. Henr. 4. 213. a.

2. La cause pur que cest faculty ou dispensatiō fuit graunt
nest repugnant ou contrary al Saint Escriture ou ley de
Dieu. Car plurality de benefices nest prohibet per le Scrip-
ture ou ley de Dieu, mes é contra est vn expresse Text que
dit, 1. Timoth. c. 5. Qui benè præsumt presbyteri duplici hono-
digni habeantur; dicit enim Scriptura non alligabis os boui
tritianti, &c. Et est alter Text que require, vt Episcopus sit
Hospitalis. Et le principall cause de graunting cest facul-
ty fuit pur enabler le Euesque a maintenir hospitality, co-
me tous appropriatiōs & unioys fuerunt fait pur mes-
me le cause. Auxi l'Office que l'Euesque aden l'Eglise est
de grand dignity, quel dignity ne poet estre preserve sans
countenance & maintenance. Pur que quant les rebe-
netwes del Euesquery ne sont sufficient, l'Ecclesiasticall
policy que done competent additiō per voy de Commē-
dam, ne terra dit repugnant ou contrary al ley de Dieu.

Auxi il poet bien estoier obe reason & religion, que vn
Euesque abera & retainera vn particular benefice obe
eure deins son Diocese demesme, pur ceo que il ad le ge-
nerall cure de tous Eglises la: habet curam Curarum,
pur que sur chescun institution il dit, accipe curam tuam &
meam. Et sur cest reason en auncient temps plusors Re-
ctories que cure ont estre appropriate al Euesqueries:
come les Rectories de Eastmeane & Hambleden sont ap-
propriate ad mensam Episcopi Winton, & l'Euesque de Sa-
rum ad plusors Rectories appropriate a son See: en mes-
me le maner auoent le Primate de Armagh, & l'Arche-
uesque de Dublin en cest Realme certeine Rectories ap-
propriate ad mensam en leur seuerall Dioceses. Et re-
uera deuant le diuision de parishes, chescun Euesque a-
noit

boit le distribution de tous les dismes deins son Diocese, come Beda dit en son Ecclesiasticall history. lib. 1. ca. 28.

3 Cest faculty ou dispensation (comment que dispensationes non debent trahi ad communem legem, come les Canonists dient) nest repugnant al rules del Common ley D'engleterre. Car la common ley D'engleterre ne prohibet pluralities, ne fait l'inferior benefice void, si incumbent soit create en Euesque, mes l'ancien l'Ecclesiasticall ley D'engleterre, oue que l'Roy puisse toutsoits dispenser per l'rule del Common ley, come auant est monstre. 11. Henr. 4. 213. a. b. Plow. Coment. Grendos Case. 503. b. 11. H. 4. 12. 2.

Et nota que l'dit Statute 7. Edw. 4. cap. 2. enact en cest Realme, que ordaine que cestuy que purchase Bull del Pape de tener benefice en Commenda serra hors del protection del Roy, prouide auzi que pardon ou licence del Roy ne serra aualeable en cest Case, que imply, que l'Judgment del Parliament adonques fuit, que licence del Roy serroit aualeable per l'rule del Common ley en tiel case, accordant al opinion d'Hankford. 11. Henr. 4. cite deuant. Et estoit oue bon reason que l'Roy dispenserat oue l'Ecclesiasticall ley touchant benefices, pur ceo que l'Roy & les lay subiects fueront les donoys de tous benefices al Ecclesiastical persons & pur ceo Marfil. Patavinus appelle les benefices del Eglise Eleemosinas laicorum.

Mes la verity est, que tiels faculties ou dispensations graunt per l'Pape touchant Ecclesiasticall benefices en Engleterre, fueront toutsoits encounter la ley del Realm, car fuit meere usurpation sur la Cozone D'engleterre deuant les Statutes faits encounter Prouisors. Et ceus Statutes fueront fait en declaration del common ley, en cest point. 11. Edw. 2. Fitz. Quar. Imp. 169. 19. Ed. 2. Fitz. Quar. non admittit 7. 15. Edw. 3. Fitz. Quar. Imp. 160. 21. Edw. 3. 40. 11. Henr. 4. 230. a.

Et quant al injury que est suppose estre fait al Patron per le graunting & executing de cest faculty, en cest Case, est manifest, come cest Case est, que l'Patron nest prejudice. Car l'Euesque ne entret en l'Uicarage, tant que ceo ad estre void per tempus semestre, & illint title accorde al Euesque mesme a collateral per laps. Et sur cest reason Rebuffus lib. de praxi beneficiorum mist un rule

Le case del Commenda.

quod quando laici patroni non presentauerint infra tempus a iure praefixum, ita quod collatio deuoluta sit ad superiorem per lapsum temporis, Papa de iure prouidere potest, sine derogatione iuris patronatus laicorum.

Secondment fuit argue per le counsell des defendants, que cest faculté fuit bien executé per acceptance & entre del Evesque en le dit vicarage sans presentation, institution, ou induction, car ceus acts ouceremonies ne sont toutfoirs de necessite desre vse en conferring dun personage ou Vicarage, que poert estre bien fait diuers voies sans presentation, institution, & induction, .1. per voy d'appropriation. 2. per voy de vnion. 3. per voy de permutation. 4. per voy de Commendam, & en temps parauant, quant le Pape blaspoit iurisdiction en Engleterre, fuit vn 5. voy viz. per voy de Prouision. 1. Quant al appropriation, vid. Plow. Comment. Grendons Case 500. a. 503. a. ou appert que le Roy (que ad sufficient autorité a faire ceo come Plow. la dit) ad en son patent d'appropriation la, Dispense oue admissio, institution, & inductio, & ad done pouer al Dean & Chapter de Wigorn & que l'appropriation fuit fait d'enter en le personage, & de tetainer ceo sans auter ceremonies & croitue resolué & ad iudge bon dispensation en cest case. Vid. 2. forme del patent d'appropriation en le dit case de Grendons Plow. Comment. 494. a. & compare ceo oue le facul. y supra. Car est grand ressemblance, come semble, entre Commendam perpetuam, & appropriation, le difference est en le temps de continuance, car Commenda perpetua est durant le vie del commendatary tantum, & appropriation est en perpetuité.

2. Quant al vnion, vid. 1. 1. Henr. 7. 8. ou Chappell esteant plein d'un incumbent fuit voite al Magdalen Colledge en Oxford, & apres l'incumbent resigné, le President & Scholers entrent en le Chappell, sans auter donation ou induction: & ceo agréé oue Rebusfus in regula de vnionibus ou il dit, possessio apprehendi potest propria auctoritate in vnione vid. ante, 50 Edw. 3. 27. 40. Edw. 3. 48.

3. Quant al permutation, vid. 2. Henr. 4. 1. 1. a. ou est dit, que sur permutation entree est loial sans pials, vid. ante, 1. E. 3. 6. 7. vid. Rebusfus in praxi beneficiorum titulo de collationibus, 653. quot sunt requisiti in permutatione beneficiorum.

Et fuit

Et fuit dit, que tiel faculty de pzennder beneficium vacaturum apres le mozt del encumbent, fuit semble al graunt del vn reuerſion de terre apres le mozt del tenant pur vie, en quel case coment que tenant pur vie beſoigne d'a-uer liuery de Seisin, vncoz le grauntee del reuerſion apres le mozt del tenant pur vie poet enter propria auctoritate ſans tiel ceremony de liuery.

Fuit auxi dit, que la ley diſpenſera oue ſoymall institution, collation, & induction, en ceſt case, pur ceo que l'Eueſque meſme eſt deſtre inueſt en le benefice, & pur ceo ou acceptance & entry eſt ſufficient: Come la comun ley diſpenſe oue expzeſſe Attournement, ou reuerſion eſt graunt al ceſty que doet attourner, & oue actual deliuerp del legacy ou legatary eſt fait executory (que poet auxi payer luy meſmes per voy de retainer) & oue assignement de Dower ouſme eſt garden en Socage, & boet endowen luy meſme de la plus beale.

Et ſicome en atincient temps prouiſion del Pape amant ſoit al collation, & ſur ceo le prouiſor pouſſoit enter, come eſt tenus per Plow. en Grendons Caſe. 500 & 11. Hen. 4. 220 Hankford dit, que prouiſion eſt come institution & acceptance come induction: illint ceſt faculty de pzennder le benefice, oue acceptance & entry del Eueſque, amoint al collation & induction.

DArrainment, fuit argue per le counſell des deſendants que quant l'Eueſque ad enter & occupie ceſt benefice per vertue de ceſt faculty, que immediately l'Egliſſe fuit fait plein de luy, & illint nul Title de preſentation fuit deuolue al Roy per lapſum temporis, durant la vie del Eueſque.

Et a prouer ceſt barrain point, ſis dient que ceſty que ad vn benefice per Canonicali title, eſt plein & perfect incumbent, & l'Egliſſe eſt plein de luy. Mes ceſty que ad benefice virtute commendæ perpetue ad ſeo per Canonicali title, & pur ceo tiel commendatary eſt plein & perfect incumbent, & l'Egliſſe eſt plein de luy. A prouer ceſt argument Linwood. fuit cite de Filijs Presbyt. cap. cum iure verb. vltio titulo. ou ſi de ſine Canonicali title en ceſt manier. Titulus Canonieus eſt ius ſpirituale, ſiue cauſa habendi beneficium Eccleſia.

Le case de Commenda.

Ecclesiasticum, qui potest esse per viam Institutionis, Collationis, Electionis, Cōmenda, vel alterius prouisionis. Et in Cōstitut. Orthoboni annex al Linwood. cap. Miserabil, verb. Cōmendare, fol. 65. est dit, quod habens cominēdam habet titulū Canonicum approbatum a iure propter necessitatem vel vtilitatem Ecclesiæ, & ideo concessa Commenda Ecclesia nō vacat.

Et pur ceo, sicome admission, & institution tantum est bon Title, & fait plenarty enter common persons, & institution & induction ou installation est bon Title vers le Roy, 22. Henr. 6. 27. 44. Ed. 3. 3. & sans tiel Title home nauera brieve al Euesque en Quare impedit. 33. Henr. 6. 1. 12. Hen. 4. 11. 22. H. 6. 44. 45. 19. Edw. 4. 9. Ilint Cōmenda que amount al admission & institution, & l'entry del Commendatary virture Commenda est bon Title, & fait plenarty en cest Case. Et cest ius spirituale, siue causa habendi beneficium Ecclesiasticū est appell Title, pur ceo que qui titulum habet ad beneficium come Rebuffus dit, potest nominari & subscribi sub titulo illius beneficii, adeo vt beneficium suum dici possit. Et habet in eo plenum ius, & fructus suos facit, vt maritus habet ius in vxore & omnibus bonis eius.

Mes ou est dit, que home ad Canonically Title per virtus del Cōmenda, ceo est destre entend del Commenda perpetua, & nemi del Commenda temporalis. Car Commenda temporalis est forsque sequestration, & poet estre graunt per queiscun ordinary pur tempus semestre, come est monstre deuant. Et pur ceo tiel Commendatary non est Prælat, nec Maritus Ecclesiæ, nec facit fructus suos, sed est administrator tantum, & custos Ecclesiæ. Et tiel Commenda non est titulus, nec facit titulum, sed est quoddam depositum, insque a ceo que sufficient encumbent soit prouide pur l'Eglise, & pur ceo tiel Commenda est communement graunt, quant le patron ne present vn able person, ou quant l'Eglise est litigious.

Mes Commenda perpetua que continue durant l'vie del Commendatary, ne poet estre graunt per aucun inferior ordinary mes solement per le Pape en tiel pais ou il ad iurisdiction, ou per le Roy ou les Delegates en cest Realme, & cest Commenda est titulus Canonicus, nam ministrat eadem ratione perpetuis Commendis, quæ in alijs titulis libr. 6. de Electionibus cap. Nemo, & ilint ad estre souent soit

foit aduige in Rota, come Gomes dit, in regul de Triennali possessor ou il argue cest point pro & contra alarge, ou il dit, que le faculty del perpetua Commenda est amplissima dispositio, & habet libertatem verborum, viz. licentia & facultatem fructus omnes percipiendi & in proprios vsus conuertendi, &c. Quæ verba important collationem & titulum, & non simplex depositum. Et ouster il dit, ille dicitur verus & legitimus titulus qui à lege, vel homine potestatem habente est concessus, & signa veri & legitimi tituli sunt, perpetuitas, & fructuum dispositio, quæ duo concurrunt in Commenda perpetua. Il dit aussi la, quod permutatio potest esse de Commenda perpetua ad commendam perpetuam, & de tiel Commenda ad titulum, & quod talis Commendatarius potest locare omnia bona Ecclesie: quod Commenda est instar Collationis, & sicut reservatio Papæ vacat per Collationem sic per Commendam perpetuam, secus per temporalem: quodque per Commendam perpetuam beneficium definit vacare, & sit plenum, quasi per viam Collationis.

Rebuffus ajoute in libr. de praxi beneficiorum. 135. agree oue Gomes, ou il dit, per mortem Commendatarii perpetui beneficium vacat, non vt prius, sed per mortem, & hæc est praxis in Francia. Commenda perpetua permutari potest cum titulo, quod sæpius vidi. Commendatarius perpetuus fructus recipit, confert, locat, ac alia omnia facit, sicut habens titulum: Commenda perpetua non potest reuocari.

Fuit ouster note & obserue, que en le Canon ley il y ad 2. soz de Vicarages, Vicaria temporalis, & Vicaria perpetua. Vicaria temporalis fuit compare al Commendat temporalis, pur ceo que tiel temporal vicar non habet titulum, sed seruit alieno nomine, & proprie curam non habet. Secus est de Vicaria perpetua, quæ est incompatibilis cum alio beneficio & habet curam animarum, & talis Vicarius habet titulum Canonici, & Quar. impedit gist de tiel perpetual vicarage. Fitz. N. Br. 32. h. Registr. 31. a. Et tiel vicar auera iuris vtrum de terres annex on done a luy perpetualment, per le Stat. de 14. Edw. 3. cap. 17. vid. 40. Edw. 3. 28. b. ou Finchden dit, que coment que ad estre tenuis que vicar nauera action de ses possessions vers null person, vncor la ley est change en cest point, & per reason, quant il est endow a luy & ses successozs perpetualment.

Et ceo

Le case de Commenda

Et ceo fuit le substance des arguments ex vraye porte fait en cest Case. Car nul Judgement est paroy done en ceo. l'Attorney general & Bolron Recorder de Dublin and Oliver Eustace le Ciuillian fueront a Conseil le one Clarke del Roy & William Talbot, James Brier, & John Haly Doctors del Ciuilley obe les defendants.

FIN.



Hill.4.Iacobi.

The Case of Præmunire,

OR

The Conuiction and Attainder of *Robert Lalor*
Priest, beeing endited vpon the statute
of 16. Rich. 2. cap. 5.



His *Robert Lalor* beeing a Native of this Kingdome receiued his Orders of Priesthood about thirty yeares since at the hands of one *Richard Brady*, to whom the Pope had giuen the title of Bishop of *Kilmore* in *Vlster*, and for the space of twenty yeares together his authority and credit was not meane within the Prouince of *Leinster*. Hee had also made his name knowne in the Court of *Rome*, and held intelligence with the Cardinall who was Protector of this Nation. by meanes whereof he obtained the title and iurisdiction of *Vicar general* of the Sea Apostolike within the Archbishoprick of *Dublin*, and the Bishopricks of *Kildare*, and *Fernes*. This pretended iurisdiction extendidg welny ouer all the Prouince of *Leinster*, he exercised boldly and securely many yeares together, vntill the Proclamation was published, whereby all *Iesuits* and *Priests* ordained by forraigne authority, were commanded to depart out of this kingdome by a certain time prefixed. After which time he began to lurke and to change his name, howbeit at last he was apprehended in *Dublin*, and committed to prison in the Castle there. Vpon his first examination

*Of what
quality, and
credit Robert
Lalor was.*

on

The case of Præmunire.

His apprehension and first examination.

When taken by the Lord Deputie himselfe, he acknowledged that he was a Priest, and ordained by a Popish *Titulari* Bishop, that he had accepted the title and Office of the Popes *Vicar generall* in the third Dioces before named, and had exercised spirituall iurisdiction *in foro conscientia*, and in sundry other points he maintained and iustified the Popes authority, onely he said, he was of opinion, that the Pope had no power to excommunicate or depose his Maiestie, because the King is not of the Popes Religion.

His first indictment and conviction.

The next terme after, he was indicted vpon the statute of 2. *Eliz.* enacted in this Realme, against such as should wilfully and aduisedly maintaine and vphold the iurisdiction of any forreine Prince or Prelat in any causes Ecclesiasticall or Ciuile within this Realme. By which statute the first offence of that kind is punished with losse of goods, and one yeares imprisonment, the second offence incurreth the penaltie of the *Præmunire*; and the third offence is made high Treason. Vpon this Indictment he was arraigned, conuicted, and condemned, and so rested in prison during the next two Tearmes without any further question. He then made petition vnto the Lord Deputie to be set at liberty, whereupon his Lordship caused him to be examined by Sir *Oliuer Saint Iohn*, Sir *James Fullerton*, Sir *Ieffrie Fenton*, the *Attorney* and *Solicitor generall*. At first hee made some euasie and indirect answers, but at last voluntarily and freely he made this ensuing acknowledgement or confession, which being set downe in writing word for word, as hee made it, was aduisedly read by him, and subscribed with his owne hand, and with the hands of those who tooke his examination, and afterwards he confirmed it by his oath before the Lord Deputie and Counsell.

His second examination.

The confession or acknowledgement of Robert Lalor Priest, made the

22. of December. 1606.

His confession or acknowledgement.

First he doth acknowledge that he is not a lawfull *Vicar generall* in the Dioces of *Dublin*, *Kildare* and *Fernes*, and thinketh in his conscience that he cannot lawfully take vpon him the said Office.

Item

The case of *Præmunire*

84

Item hee doth acknowledge our Soveraigne Lord King James that now is, to be his lawfull, chiefe, and Supremel gouernour in all causes, as well Ecclesiasticall as Ciuill, and that he is bound in conscience to obey him in all the said causes, and and that neither the Pope, nor any other forreine Prelate, Prince, or Potentate hath any power to controll the King in any cause Ecclesiasticall or Ciuill within this Kingdome, or any of his Maiesties Dominions.

Item he doth in his conscience beleue, that all Bishops ordained and made by the Kings authority within any of his Dominions, are lawfull Bishops, and that no Bishop made by the Pope, or by anie authoritie derived from the Pope within the Kings Dominions, hath any power or authoritie to impugne, disannull, or controll any Act, done by any Bishop made by his Maiesties authoritie as aforesaid.

Item he professeth himselfe willing and ready to obey the King as a good and obedient Subject ought to doe, in all his lawfull commandements, eyther concerning his function of Priesthood, or any other dutie belonging to a good Subject.

After this confession made, the State here had no purpose to proceed against him severely, either for his contempt of the Proclamation, or offence against the Law. So as he had more liberty than before, and many of his friends had access vnto him, who telling him what they heard of his confession, hee protested vnto them, that he had only acknowledged the kings Ciuill and Temporall power, without any confession or admittance of his authoritie in *spirituall causes*. This being reported vnto the Lord Deputie by sundry gentlemen, who gaue faith vnto what he said, his Lordship thought fit, that since he had incurred the paine of *Præmunire* by exercising Episcopall iurisdiction as *Vicar generall* to the Pope, that hee should be punished of that offence, as well to make him an example to others of his profession (for almost in every Diocess of this kingdome there is a Titulary Bishop ordained by the Pope) as also that at the time of his trial a iust occasion might be taken, to publish the confession and acknowledgement which he had voluntarily made, signed, and confirmed by oath before the Lord Deputie and Counsell, who haue likewise subscribed their names as witnesses thereof.

P

Here

The case of Præmunire.

The indictment of Lalor upon the Stat. of 16. Ric. 2.

Hereupon, in *Hillarie Term 4. Jacobi*, an inditement was framed against him in the Kings Bench vpon the statute of 16. Ric. 2. cap. 5. containing these seuerall points.

1. That he had receiued a *Bull* or *Breefe* purchased or procured in the Court of Rome, which *Bull* or *Breefe* did touch or concerne the Kings Crowne and dignity Royall, containing a Commission of Authoritie from the *Pope of Rome* vnto *Richard Brady* and *David Magrath* to constitute a *Vicar generall* for the Sea of *Rome*, by the name of the *Sea Apostolike*, in the seuerall Diocesess of *Dublin*, *Kildare*, and *Fernes* within this Kingdome of *Ireland*.

2. That by pretext or colour of that *Bull* or *Breefe* hee was constituted *Vicar generall* of the Sea of *Rome*, & took vpon him the stile and title of *Vicar generall* in the said seuerall diocesess.

3. That he did exercise Ecclesiasticall Iurisdiction as *Vicar generall* of the Sea of *Rome*, by instituting diuers persons to benefices with cure of soules by granting dispensations in causes Matrimoniall, by pronouncing sentences of diuorce betweene diuers married persons, and by doing all other acts and things pertaining to Episcopall iurisdiction within the said seuerall Diocesess, against our Soueraigne Lord the King his Crowne and dignity Royall, and in contempt of his Maiestie, and disherison of his Crowne, and contrary to the forme and effect of the statute, &c.

To this inditement *Lalor* pleaded *not guilty*, and when the issue was to be tried, the name and reputation of the man, and the nature of the cause, drew all the principall gentlemen both of the *Pale* and *Provinces* that were in towne to the hearing of the matter. At what time a substantiall Iurie of the City of *Dublin* being sworne for the trial, and the points of the Inditement being opened and set forth by the *Kings Seriant*, the *Attorney generall* thought it not impertinent, but very necessary, before he descended to the particular euidence against the prisoner, to informe and satisfie the hearers in two points.

1. What reason moued vs to ground this inditement vpon the old statute of 16. Ric. 2. rather than vpon some other later law made since the time of *King Henr. 8.*

2. What were the true causes of the making of this law of 16. Ric. and other former lawes against *Pronisors* and such as did appeale to the Court of *Rome* in those times, when both the

The case of Præmunire.

85

the Prince & people of England did for the most part acknowledge the Pope to be the *thirteenth Apostle*, and onely oracle in matters of Religion, and did follow his doctrine in most of those points, wherein we now dissent from him.

1. For the first point, we did purposely forbear to proceede against him vpon any latter law, to the end, that such as were ignorant, might be informed, that long before *K. Henr. 8.* was borne, diuers lawes were made against the vsurpation of the Bishop of Rome vpon the rights of the Crowne of England, well nie as sharpe and as seuer as any statutes which haue bin made in later times, and that therefore we made choice to proceede vpon a law made more then 200. yeares past, when the King, the Lords, and Commons which made the lawes, and the Iudges which did interpret the lawes, did for the most part follow the same opinions in Religion, which were taught and held in the Court of Rome.

2. For the second point, the causes that mooued and almost enforced the English nation to make this, and other statutes of the same nature, were of the greatest importance that could possibly arise in any state. For these lawes were made to uphold and maintaine the Soueraigntie of the King, the liberty of the people, the common lawe, and the common-weale, which otherwise had beene vndermined and vtterly ruined by the vsurpation of the *Bishop of Rome*.

For albeir the Kings of England were absolute Emperours within their Dominions, and had vnder them as learned a Prelacie and Cleargie, as valiant and prudent a Nobility, as free and wealthy a Commonaltie as any was then in Christendom; yet if wee looke into the stories and records of these two *Imperiall* kingdomes, we shall find, That if these lawes of *Provisiõ* and *Præmunire* had not beene made, they had lost the name of *Imperiall*, and of Kingdomes too, & had bin long since made *Tributary* Prouinces to the *Bishop of Rome*, or rather part of *S. Pese*. patrimony in demesne. Our King had had their Scepters wrested out of their hands, their Crowns spurned off frõ their heads, their necks trod vpon, they had bin made Laquaies or footmen to the Bishop of Rome, as some of the Emperours and French Kings were, our Prelates had beene made his Chaplaines and Clearks, our Nobilitie his vassalls and seruants, our Commons his slaues and villaines, if these Acts of manu-mis-

*The true
cause of ma-
king the stat.
of 16.R.2. &
other statutes
against
Præmunire.*

The case of Præmunire.

*The statute
of præmunire
made at
prayer of the
Commons.*

*The effect of
the statute of
16.R.2.ca.5*

sion had not freed them. In a word, before the making of these Lawes, the flourishing Crowne and Common-wealth of Englād was in extreame danger to haue bin brought into most miserable seruitude and slavery, vnder colour of Religion and deuotion to the Sea of Rome. And this was not onely seen and felt by the King, and much repined at, and protested against by the Nobilitie, but the Commons, the generall multitude of the Subiects did exclaime and cry out vpon it. For the Commons of England may be an example vnto all other Subiects in the world in this, that they haue euer beene tender and sensible of the wrongs and dishonors offered vnto their Kings, and haue euer contended to vphold and maintaine their honour and Soueraigntie. And their faith and loyaltie hath been generally such (though euery age hath brought forth some particular monsters of disloyaltie) as no pretence of zeale or religion could euer withdraw the greater part of the Subiects to submit themselves to a forrein yoke, no not when Popery was in her height and exaltation, wherof this Act and diuers other of the same kind are cleere and manifest testimonies. For this Act of 16. Rich. 2. was made at the prayer of the Commons: which prayer they make not for themselves, neither shew they their owne selfe-loue therein (as in other Bills which contain their grieuances) but their loue and zeale to the King and his Crowne. When after the Norman Conquest they importuned their Kings for the *great Charter*, they sought their owne liberties, and in other bills preferred commonly by the Commons against *Shriefes, Escheators, Purueyors*, or the like, they seek their owne profit and ease: but here their petition is to the King, to make a law for the defence and maintenance of his owne honor. They complaine, that by Bulls and proccesses from Rome the King is deprived of that iurisdiction which belongs of right to his imperiall Crowne: that the King doth loose the seruice and counsell of his Prelars, and learned men by translations made by the Bishop of Rome: That the Kings lawes are defeated at *his* will, the Treasure of the Realme is exhausted and exported to enrich *his* Court, & that by those means the Crown of England, which hath euer beene free and subiect vnto none, but immediately vnto God, should bee submitted vnto the Bishop of Rome, to the vtter destruction of the King and the whole Realme, which God defend, say they: and thereupon

upon out of their exceeding zeale and seruencie, they offer to liue and die with the king in defence of the liberties of the Crowne. And lastly they pray and require the King by way of iustice, to examine all the Lords in Parliament, what they thought of these manifest wrongs and vsurpations, and whether they would stand with the King in defence of his Royall liberties, or no: which the King did according to their petition: and the Lords Spiri tuall and Temporal did all answere, that these vsurpations of the Bishop of Rome were against the liberties of the Crowne, and that they were all bound by their allegiance to stand with the King and to maintaine his honour and prerogatiue. And therupon it was enacted with a full consent of the three Estates, that such as should purchase in the Court of Rome, or elsewhere, anie *Bulls* or *Processes*, or other things which might touch the King in his Crowne and dignitie Royall, and such as should bring them into the Realme, and such as should receiue them, publish them, or execute them, they their Notaries, Proctors, Maintainors, and Counsellours, should bee all out of the Kings protection, their lands and goods forfeited to the King, their bodies attached if they might be found, or else processe of *Præmunire facias* to be awarded against them. Vpon these motives, and with this affection and zeale of the people, was the statute of 16. *Rich. 2.* made, whereupon we haue framed our inditement.

Now let vs looke higher, and see whether the former lawes made by King *Edw. 3.* and King *Edw. 1.* against the vsurpation of the Bishop of Rome were not grounded vpon the like cause and reason. The statute of 38. *Edw. 3. cap. 1.* expressing the chiefes that did arise by *Brenes of citation*, which drew the bodies of the people, and by *Bulls of prouision* and *reservation* of Ecclesiasticall benefices, which drew the wealth of the Realm to the Court of Rome, doth declare, that by these meanes the ancient lawes, customes, and franchises of the Realm were confounded; the Crowne of our Soueraigne Lord the King diminished, and his person falsly defamed; the Treasure and riches of the land carried away, the Subjects of the Realm molested and impouerished; the benefices of holy Church wasted and destroyed; Diuine seruice, Hospitality, Almesdeeds, and other workes of charitie neglected.

*The effect
of the statute
of 38. Edw.
3. cap. 1.*

The case of Præmunire.

*The statute
of 27. Ed. 3.
cap. 1.*

*The statute
of 25. Edw.
3. reciting
the statute of
25. Ed. 1.*

Againe 27. *Edw.* 3. *cap.* 1. vpon the grievous and clamorous complaint (for that phrase is there vsed) of the great men, and Commons touching *Citations* and *Prouisions*, it is enacted, that the offenders shall forfeit their lands, goods, and chattells, and their bodies be imprisoned and ransomed at the Kings will. But in the statute of 25. *Edw.* 3. wherein the first lawe against *Prouisors* made 25. *Edw.* 1. is recited, there is a larger declaration of these inconueniences, than in the two last Acts before mentioned. Forthere all the Commons of the Realme doe grieuouly complaine, that where theas holy Church of England was first founded in estate of Prelacie by the Kings and Nobilitie of that Realme, and by them endowed with great possessions and reuenewes in lands, rents, and Aduowsons, to the end the people might be informed in Religion, Hospitality might be kept, and other works of Charitie might be exercised within the Realme. And whereas the King and other founders of the said Prelacies were the rightfull Patrons and Adowes: thereof, and vpon auoydance of such Ecclesiasticall promotions had power to aduance thereunto their kinsmen, friends, and other learned men of the birth of that Realme, which being so aduanced became able and worthy persons to serue the King in Counsell, and other places in the Commonweale; The Bishop of Rome vsurping the Seigniorie of such possessions and benefices did giue & grant the same, to *Aliens*, which did neuer dwell in England, and to *Cardinals* which might not dwell there, as if he were rightfull Patron of those benefices: whereas by the law of England he neuer had right to the Patronage thereof: whereby in short time all the spirituall promotions in the Realme would be ingrossed into the hands of Strangers, Canonically Elections of Prelats would be abolished, workes of Charity would cease, the founders and true patrons of Churches would be disinherited, the Kings Counsell would be weakened, the whole kingdome impoverished, and the lawes and rights of the Realme destroyed. Vpon this complaint it was resolved in Parliament, That these oppressions and grieuances should not bee suffered in any manner: and therefore it was enacted, that the King and his Subjects should thenceforth enjoy the rights of patronage; that free elections of Archbishops, Bishops, and other Prelates electiue should be made according to the ancient grants of the Kings

The case of Præmunire.

87

Kings progenitors and ther founders, that no *Bulls* of *Prouisifion* should be put in execution, but that the *Prouisors* should bee attached, fined, and ransomed at the Kings will, and withall imprisoned till they had renounced the benefits of their *Bulls*, satisfied the partie grieved, and given sureties not to commit the like offence againe.

Now, Master *Lalor*, what thinke you of these things? did you beleeue that such lawes as these had beene made against the Pope 100. 250. 300. yeares since? was King *Hen. 8.* the first Prince that opposed the Popes vsurped authority? were our Protestants the first Subiects that euer complained of the Court of Rome? of what Religion, thinke you, were the propounders and enacters of these lawes? were they good Catholics? or good Subiects? or what were they? You will not say they were Protestants, for you will not admit the reformed Religion to be so ancient as those times, neither can you say they were vndutifull, for they stroue to vphold their liege Lords Souerainety. Doublesse the people in those dayes did generally embrace the vulgar errors and superstitions of the Romish Church, and in that respect were Papists as well as you, but they had not learned the new doctrine of the Popes Supremacie, and transcendent authority ouer Kings; They did not beleeue he had power to depose Princes, and discharge Subiects of their allegiance, to abrogate the fundamentall lawes of kingdomes, and to impose his Canons as binding lawes vpon all nations, without their consents: they thought it a good point of Religion to be good Subiects, to honour their King, to loue their country, and to maintaine the lawes and liberties thereof, howsoeuer in other points they did erre and were mislead with the Church of Rome.

So as now (Master *Lalor*) you haue no excuse, no euasion, but your conscience must condemne you, as well as the lawe; since the law-makers in all ages, and all religious Papists and Protestants doe condemne you, vnlesse you thinke your selfe wiser than all the Bishops that were the in England, or all the Iudges who in those dayes were learned in the Ciuill and Canon lawes, as well as in the Common lawes of England. But you being an *Irish man*, will say, perhaps these lawes were made in England, and that the *Irish Nation* gaue no particular consent thereunto, onely there was an implicite consent wrapt and

These lawes made by such as did profess the Romish Religion

Lawes against Prouisors made in Irelande

The case of Præmunire,

and folded vp in generall tearmes giuen in the statute of 10. *Henr. 7. cap. 22.* whereby all statutes made in England, are established and made of force in Ireland. Assuredly, though the first Parliament held in *Ireland*, was after the first law against *Prouisors* made in England yet haue there bin as many particular lawes made in Ireland against *Prouisions*, *Citations*, *Bulls*, and *Breues* of the Court of Rome, as are to be found in all the Parliament Rolls in England. What will you say if in the selfe same Parliament of 10. *Henr. 7. cap. 5.* a special law were made, enacting, authorising, and confirming in this Realme all the statutes of England made against *Prouisors*? if before this the like law were made. 32. *Henr. 6. cap. 4.* and againe. 28. *Henr. 6. cap. 30.* the like. And before that, the like law were made. 40. *Edw. 3. cap. 13.* in the famous Parliament of *Kilkenny*. If a statute of the same nature were made. 7. *Edw. 4. cap. 2.* and a seuerer law then all these. 16. *Edw. 4. cap. 4.* That such as purchase any *Bulls* of *Prouision* in the Court of Rome, as soone as they haue published or executed the same to the hurt of any incumbent, should be adiudged traytors: which Act if it be not repealed by the Statute of *Queene Mary*, may terrifie Master *Lalor* more than all the Actes which are before remembred.

When the
Pope began
first to usurp
upon the
liberties of
the Crowne
of England.

But let vs ascend yet higher, to see when the Popes usurpation, which caused all these complaints, began in England, with what successe it was continued, and by what degrees it rose to that height, that it well nie ouer topp't the Crowne: whereby it will appeare whether hee had gained a circle by prescription by a long and quiet possession, before the making of these lawes.

A compariso
of the spiritu
al Monarchy
of the Church
with the tem
porall Mo
narchie of
the world.

The first encroachment of the Bishop of Rome upon the liberties of the Crowne of England, was made in the time of King *William the Conqueror*. For before that time the Popes writ did not runne in England, his *Bulls* of excommunication and *prouision* came not thither, no citation, no appeals were made from thence to the Court of Rome. Our Archbishops did not purchase their *Palls* there, neither had the Pope the investiture of any of our Bishopricks. For it is to be obserued, that as vnder the *Temporall Monarchie* of Rome, *Brittany* was one of the last Provinces that was won, & one of the first that was lost again. So vnder the *spirituall Monarchie* of the Pope of Rome, Eng
land

land was one of the last countries of Christendom that received his yoke, & was againe one of the first that did reject and cast it off. And truly, as in this, so in diuers other points, the course of this *spirituall Monarchy* of the Pope, may be aptly compared with the course of the *temporall Monarchies* of the world: For as the *temporall Monarchies* were first raised by intrusion vpon other Princes and Common-weales; so did this *spirituall Prince* (as they now stile him) grow to his greatnesse by vsurping vpon other States and Churches. As the *temporall Monarchies*, following the course of the *Sunne*, did rise in the *East*, and settle in the *West*, so did the *Hierarchie* or gouernment of the Church. Of the foure *temporall Monarchies* the first two were in *Asia*: the latter two in *Europe*: but the *Romane Monarchy* did surpasse and suppress them all: So were there foure great *Patriarches*, or *Ecclesiasticall Hierarchies*, two in the *East*, and two in the *West*, but the *Romane Patriarch* exalted himselfe, and vsurped a *Supremacie* aboue them all. And as the rising of the *Romane Empire* was most opposed by the State of *Carthage* in *Africa* (*emula Romæ Carthago*:) So the Councell of *Carthage* and the *African Bishops* did first forbid *appeales* to Rome, and opposed the *Supremacie* of the Pope. And doth not *Daniels* image, whose head was of gold, and legs and feete of iron and clay, represent this *spirituall Monarchy* as well as the *temporall*, whereas the first Bishops of Rome were *golden Priests*, though they had but wooden Chalice, and that the *Popes* of later times haue beene for the most part worldly and earthly minded? And as the *Northerne Nations* first revolted from the *Romane Monarchie*, and at last brake it in peeces, haue not the *North* and *Northwest Nations*, first fallen away from the *Papacie*, and are they not like in the end to bring it to ruine?

But to returne to our purpose. The Bishop of Rome before the first *Norman Conquest* had no iurisdiction in the Realme of England, neither in the time of the *Brittons*, nor in the time of the *Saxons*. *Eleutherius* the Pope within lesse then 200 yeares after Christ, writes to *Lucius* the *British King*, and calls him *Gods Vicar* within his kingdome: which title he would not haue giuen to that King, if himselfe vnder pretence of being *Gods Vicar* generall in earth had claimed iurisdiction ouer all Christian kingdomes.

The Pope had
no iurisdiction
in England
in the time
of the Brit-
tons.

Pelagius

The case of Præmunire.

Pelagius the Monke of *Bangor* about the yere 400. being cited to *Rome*, refused to appeare vpon the *Popes* citation, affirming, that *Bris.* was neither within his Dioces, nor his Prouince.

After that, about the yere 600. *Augustine* the Monke was sent by *Gregory* the great into England to conuert the *Saxons* to Christian Religion, the *Brittish* Bishops then remayning in *Wales* regarded not his Commission nor his doctrine, as nor owing any duty, nor hauing any dependencie on the Court of *Rome*, but still retained their ceremonies and traditions which they receiued from the *East* Church vpon the first plantation of the faith in that Iland, being diuers and contrarie to those of the Church of *Rome*, which *Augustine* did endeauour to impose vpon them.

The like doth *Beda* write of the *Irish* Priests and Bishops. For in the yere 660. he reporteth, That a conuocation of the Clergie being called by King *Oswif*, there rose a disputation betweene *Colman* one of our *Irish* Saints, then present in that Synod, and *Wilfrid* a *Saxon* Priest, touching the obseruation of *Easter*, wherein the *Brittish* and *Irish* Churches did then differ from the Church of *Rome*. *Coleman* for the celebration of *Easter* vsed in *Ireland*, affirmed it was the same *quod beatus Euangelista Ioannes, discipulus specialiter à Domino dilectus, in omnibus, quibus præerat, Ecclesijs celebrasse legitur.* On the other part *Wilfr.* alledged, that all the Churches of Christendome did then celebrate *Easter* after the *Roman* maner, except the Churches of the *Brittons* and *Picts*, *qui contra totū orbē* (said he) *stulto labore pugnant.* Wherunto *Colman* replied, *Miror quare stultū laborē appellas, in quo tanti Apostoli qui super pectus Domini recumbere dignus fuit, exempla sectamur. Nunquid reuerendissimū patrē nostrum Columbā, & eius successores, viros à Deo dilectos diuinū paginis contraria sapuisse aut egisse credendum est?* In this disputation or dialogue, two things may be obserued: first, that at this time the authority of the Bishop of *Rome* was of no estimation in these Ilands: next, that the Primitiue Churches of *Brittany* and *Ireland* were instituted according to the forme and discipline of the *East* Churches, and not of the *West*, and planted by the Disciples of *Iohn*, and not of *Peter*. Thus much for the time of the *Brittons*. For the *Saxons*, though King *Ina* gaue the *Penitence* to the Pope, partly as *Almes*, and partly in recompence of a house erected in *Rome* for entertainment of English pilgrimes

The case of Præmunire.

89

pilgrimes, yet it is certaine, that *Alfred*, and *Arhelstane*, *Edgar* and *Edmund*, *Canutus*, and *Edward the Confessor*, and diuers other Kings of the *Saxon* race did giue all the Bishopricks in England *Per annulum & baculum* without any other ceremony as the *Emperour* and the *French King*, and other Christian Princes were wont to doe. They made also severall lawes for the gouernment of the Church: Among others *Saint Edward* begins his lawes with his protestation, that it is his Princely charge, *vs populum Domini, & super omnia, sanctam Ecclesiam regat & gubernet*. And King *Edgar* in his Oration to his English Cleargie, *Ego* (saith he) *Constantini, vs Petri gladium habetis: iungamus dextras, & gladium gladio copulemus, ut eiciantur extra Castra leprosi, & purgetur sanctuarium Domini*. So as the Kings of England with their own Cleargie did gouerne the Church, and therein sought no ayde of the Court of Rome. And the troth is, that though the Pope had then long hands, yet hee did not extend them so farre as *England*, because they were full of busines neerer home in drawing the *Emperour* & the *French King*, vnder his yoke. But vpon the conquest made by the *Norman*, he apprehended the first occasion to vsurpe vpon the liberties of the Crowne of England. For the *Conqueror* came in with the *Popes Banner*, and vnder it won the battaile which got him the garland: and therefore the Pope presumed hee might boldly plucke some flowers from it, being partly gained by his countenance and blessing. Hereupon he sent two *Legates* into England, which were admitted and receiued by the *Conqueror*. With them he called a *Synod* of the Clergie, and deposed old *Stigand* Archbishop of *Canterbury*, because hee had not purchased his *Pal* in the Court of Rome, he displaced many Bishops and Abbots to place his *Normans* in their roomes. And amongst the rest it is to be noted, That the King hauing earnestly mooued *Walslon* Bishop of *Worcester*, being then very aged, to giue vp his staffe, his answer was, that hee would giue vp his staffe onely to him of whom hee first receiued the same. And so the old man went to *Saint Edwards Tombe*, and there offered vp his staffe and Ring, with these words, *Of thee O holy Edward, I receiued my staffe and my Ring, and to thee I do now surrender the same againe: which proues, that before the Norman Conquest the King did inuest his Bishops per annulum & baculum as I said before.*

The first
usurpation of
the Pope vpon
the crowne
began in the
time of King
William the
Conqueror.

By sending
Legates into
England.

Thus

The case of Præmunire.

90

And thereupon *Anselme* departing out of the Realme, without licence, the King seised his temporalities, and became so exasperate and implacable towards the Bishop, as he kept him in perpetuall exile during his Raigne, albeit great intercession were made for his returne, as well by the Pope as the King of France. In the time of the next King *Henr. I.* though he were a learned and a prudent Prince, yet they sought to game a further point vpon him, and to plucke a flower from his Crowne of greater value, namely the patronage and donation of Bishopricks, and all other benefices Ecclesiasticall. For *Anselme* being reuok't and re-established in the Sea of *Canterbury*, the Bishopricks of *Salisbury*, and *Hereford* fell voyd, which the King bestowed two of his Chaplaines. But *Anselme* &c. their Metropolitan did refuse to consecrate them, so as the Archbishop of *Yorke* was faine to performe that Office, who with the Chiefe of the English Cleargie stood with the King, and withstood *Anselme*. Hereupon the King requires him to doe his homage: the Bishop denies it: the King demands of him whether the patronage and inuestiture of all Bishopricks were not his rightfull inheritance: the Bishop said it was not his right, because Pope *Vrbane* had lately made a decree that no lay person should giue any Ecclesiasticall benefice. This was the first question that euer was made touching the King of Englands right of patronage, and donation of Bishopricks within his dominions. This new question caused many messages and ambassages to Rome. At last the King writes plainly to the Pope, *Notum habeat sanctitas vestra, quod me viuente (Deo auxiliante) dignitates & usus regni nostri non minuentur, & si ego (quod absit) in tanta me directione ponerē, magnates mei, imo totius Anglia populus id nullo modo pateretur.* Besides, *William de Warrenast* the Kings procurator in the Court of Rome, told the Pope that the King would rather loose his kingdome then he would loose the donation of Bishopricks. The Pope answered, know you precisely Sir, I speake it before God, that for the redemption of my head, I would not suffer him to enioy it.

In the time of K. Henry the first, the Pope usurpeth the donation of Bishopricks,

Histor. Toronensis. M. S. in Archiv. Rob. Cotton Eq. Aur.

After this *Anselme* being receiued into the Kings fauour, in a Synod of the English Cleargie holden at London in the yere 1107. a decree was made, *Cui annis Rex Henricus, saith Math. Paris.* that from thenceforth *nunquam per donationem, Baculi*

Q

Pastoralis

The case of Præmunire.

Pastoralis vel annuli quisquam de Episcopatu, vel Abbathia per Regem, vel quamlibet laicam manum inuestiretur in Anglia. In recompence whereof, the Pope yelded this fauour to the King, that thenceforth no Legate should be sent from the Popes side into England, vnlesse the King required it; and that the Archbishop of Canterbury for the time being, should be for euer *Legatus natus*: and *Anselme* for the honor of his Sea, obtained, that the Archbishop of Canterbury should in all generall Councells sit at the Popes foote *tanquam alterius orbis Papa*. Notwithstanding, as the succeeding Popes kept not their promise touching the sending of Legates, so this selfe-same King, after the death of *Anselme*, broke the decree touching the inuestiture of the Bishops. For hee gauethe Archbishopricke of Canterbury to *Rodolph* Bishop of London, saith *Matth. Paris. Et illum per anulum & Pastoralem baculum inuestiuit*, as before he had inuested *Willielmum Gifford* in the Bishoprick of Winchester, *contro noui Concilij statuta*, as the same Author reporteth.

In the time
of King Stephen the
Pope gained
appeales to
the Court of
Rome.

The times of the next succeeding King *Stephen* were full of Ciuile dissentions, which made the land well nie waste, so as *Saint Peters* successor could not take any fish in such troubled waters. Yet during the Kings raigne, they wonne that point of iurisdiction which they attempted to get, but failed thereof in the time of King *William Rufus*; namely, That *appeales* might bee made to the Court of Rome. For in a Synod at London summoned by *Henr.* Bishop of Winchester the Popes Legate, it was decreed, That *appeales* should be made from Prouinciall Councells to the Pope, before that time *appellationes in usu non erant*, saith a Monke of that time, *Donec Henricus Winton Episcopus malo suo dum Legatus esset, crudeliter intrusit*. Thus did the Pope vsurpe three maine points of iurisdiction vpon three seuerall Kings after the Conquest (for of *William Rufus* he could winne nothing) namely vpon the Conquerour, the sending of Legates or Commissioners to heare and determine Ecclesiasticall causes; vpon *Henr.* 1. the donation and inuestitures of Bishoprickes and other benefices; vpon King *Stephen*, the *appeales* to the Court of Rome.

* In the time
of K. Henry
2. the Pope
claymed exemption
of Clarks from
the secular
power.

* Now are we come to King *Henr.* 2. in whose time they made a further encroachment vpon the Crowne, wherby they endeauoured to make him but halfe a King, and to take away halfe

The case of Præmunire.

91

halfe his Subjects by exempting all Clarke from secular power. Hereupon rose that long and great contention betweene King *Henr. 2.* and *Thomas Becket*, which on *Becket's* behalfe may be rightly tearmed rebellion and treason: the iust cause and ground whereof was the same, that made the late difference betweene the *Pope* and the *Venetians*. For a Priest had committed a fowle murder, and being thereof indicted and conuicted, prayed the benefit of his Cleargie, which being allowed vnto him, he was deliuered to the Bishop of *Salisbury* being his ordinary, to make his purgation: which the murderer failing to doe, should by the lawe haue beene degraded, and deliuered backe to the secular power. But the Bishop contemning the law of the land, to enlarge the liberties of the Church, sent his prisoner to *Thomas Becket* then Archbishop of *Canterbury*, who shewed him into an Abbey, and so rescued him for the capitall punishment he had iustly deserued.

*A breefe of
Th. Becket's
troubles or
rather treasons.*

This gap of impunitie being once opened, the Cleargie grew so outrageous, as the King was enformed of a hundred murders committed by Clarke, and yet not one of them executed for the same, for that the Archbishop had protected them all after the same manner. For this the King was iustly incensed against the Archbishop, who iustified his doing herein. Whereupon a common counsell as well of the *Bishops*, as of the *Nobility* was called, wherein they did reuiue and re-establish the ancient lawes and customes of the kingdome for the gouernement of the Cleargie, and ordering of causes Ecclesiasticall, whereof these were the principall heads or articles.

*The Constitutions of
Claringdon.*

1. That no Bishop, nor Clarke should depart the Realme without the Kings licence, and that such as obtained licence, should giue sureties that they should procure no hurt or damage to the King or Realme during their absence in forreine parts.

2. That all *Bishopricks* and *Abbeys* being void should remaine in the Kings hands as his owne demesnes, vntill he had chosen and appointed a Prelat thereunto, and that euery such Prelat should doe his *homage* to the King before hee were admitted vnto the place.

3. That *appeales* should be made in causes Ecclesiasticall in this manner: from the Archdeacon to the Ordinary, from the

Q. 2

Ordinary

The case of Præmunire.

the Ordinary to the Metropolitan, from the Metropolitan to the *King*, and no further.

4. That *Peter pence* should be paid no more to the *Pope*, but to the *King*.

5. That if any *Clarke* should commit felony, he should be hanged, if treason, he should be drawne and quartered.

6. That it should be adiudged high treason to bring in *Bulls* of *Excommunication* whereby the Realme should be cursed.

7. That no decree should be brought from the *Pope* to be executed in England vpon pain of imprisonment and confiscation of goods.

To these and other Constitutions of the like nature made at *Claringdon*, all the rest of the *Bishops* and *great men* did subscribe and bound themselves by oath to obserue the same absolutely, onely the *Archbishop* would not subscribe, and sweare, but with a *Sauing saluo suo ordine & honore sanctæ Ecclesiæ*: yet at last he was content to make the like absolute *subscription* and *oath* as the rest had done, but presently he repented, and to shew his repentance suspended himselfe from celebrating *Mass*, till he had receiued absolution from the *Pope*. Then he began to maintaine and iustifie the *exemption of Clarkes* againe: whereat the *Kings* displeasure was kindled anew: and then the *Archbishop* once againe promised absolute obedience to the *Kings* lawes (See the ficklenes and mutability of your constant Martyr.) The *King* to bind fast this slippery *Protem*, called a Parliament of the *Bishops* and *Barons*, and sending for the Roll of those lawes, required all the *Bishops* to set their seales thereunto. They all assented, but the *Archb.* who protested he would not set his seale, nor giue allowance to those lawes. The *King* being highly offended with his rebellious demeanor, required the *Barons* in Parliament to giue Iudgement of him, who being his subiect would not be ruled by his lawes: *Cito facite mibi iussitiã de illo, qui homo meus ligens est, & stare Iuri in Curia mea recusat*. Whereupon the *Barons* proceeding against him, & being ready to condemne him: I prohibere you (quoth the *Archb.*) in the name of Almighty God to proceed against me, for I haue appealed to the *Pope*, and so departed in contempt of that high Court, *Omnibus clamantibus* saith *Houenden*, *quo progredieris proditor? expecta & audi iudicium tuũ*. After this he lurked secretly neere the Sea shore, and changing his apparell and name (like a Iesuit

The case of Præmunire.

92

Iesuit of these times,) he tooke shipping with a purpose to flye to *Rome*, but his passage being hindered by contrary winds, he was summoned to a Parliament at *Northampton*, where he made default wilfully, for which contempt, his temporalties were seised, and his body being attacht, he was charged with so great an account to the King, as that he was found in arreare *thirty thousand markes*, and committed to prison, whence hee found meanes to escape shortly after, and to passe out of the Realme to *Rome*. He was no sooner gone, but the King sends writs to all the Sherifes in England to attach the bodies of all such as made any *appeales* to the *Court of Rome*: hereupon many messages and letters passing to and fro, all the *suffragans* of *Canterbury* ioyned in a letter to the Pope, wherein they condemne the fugitiue *Archbishop*, and iustifie the Kings proceedings: Vpon this the Pope sends two *Legates* to the King being then in *Normandy* to meditate for the *Archbishop*. They with the mediation of the *French King*, preuailed so farre with *King Henry*, as that he was pleased to accept his submission once againe, and promised the *King of France*, that if he would be obedient to his lawes, he should enioy as ample liberties as any *Archbishop of Canterbury* euer had: and so sent him into England with recommendation vnto the young King his Sonne then lately Crowned, who hearing of his comming, commanded him to forbear to come to his presence, vntill hee had absolved the *Arch. of York* and others whō he had excommunicated for performing their duties at his Coronation. The *Archbishop* returned answer that they had done him wrong in vsurping his office, yet if they would take a solemne oath to become obedient to the *Popes* commandement in al things concerning the church he would absolve them The Bishops vnderstanding this, protested they would neuer take that oath vnlesse the King willed them so to do. *K. Henry* the father being hereof aduertised into *France*, did rise into great passion & choler, and in the hearing of some of his seruants vttered words to this effect: *Will no man reuenge me of mine enemies?* Whereupon the 4. Gentlemen named in the stories of that time passed into England, and first mouing the *Archbishop* to absolve the *Bishop* whom he had excommunicated for performing their duties at the young Kings Coronation: and receiuing a peremptory answer of deniall from the *Archbishop*, they laid violent hands vpon him, and slew him, for

The case of Præmunire.

*Four points
of iurisdiction
vsurped vpon
the crown of
England by
the Pope be-
fore the reign
of K. Iohn.*

which the King was faine not onely to suffer corporall penance, but in token of his humiliation to kisse the knee of the *Popes Legate*. And this is the abridgement of *Beckets troubles*, or rather *treasons*, for which he was celebrated for so famous a Martyr. And thus you see, by what degrees the *Court of Rome* did within the space of one hundred and odde yeares, vsurpe vpon the Crown of England foure points of iurisdiction. *Viz.* First sending out of *Legats* into England. Secondly drawing of *Appeales* to the *Court of Rome*. Thirdly, donation of bishopricks and other Ecclesiasticall benefices; And fourthly, exemption of *Clarks* from the secular power. And you see withall, how our Kings and Parliaments haue from time to time opposed and withstood this vniust vsurpation.

Now then the *Bishop of Rome* hauing claimed and wel nie recovered full and sole iurisdiction in all causes Ecclesiasticall, and ouer all persons Ecclesiasticall, with power to dispose of all Ecclesiasticall benefices in England, whereby he had vpon the matter made an absolute conquest of more than halfe the kingdome (for euerie one that could read the *Psalme* of *Miserere* was a Clarke, and the Clergie possessed the moytie of all temporall possessions;) There remained now nothing to make him owner and proprietor of all, but to get a surrender of the Crowne, and to make the King his *Farmer*, and the people his *Villaines*, which he fully accomplished and brought to passe in the times of King *Iohn*, and of *Henr. 3.*

*The cause of
the quarrell
betweene K.
Iohn & the
Pope.*

The quarrell betweene the *Pope* and *King Iohn* which wrested the Scepter out of his hand, and in the end brake his heart, began about the election of the *Archbishop of Canterbury*. I call it election, and not donation or inuestiture: for the manner of inuesting of Bishops by the Staffe and Ring after the time of *King Henr. 1.* was not any more vied, but by the Kings licence they were Canonically elected, and being elected, the King gaue his Roiall assent to their election, and by restitution of their temporalities did fully inuest them. And though this course of election began to be in vse in the time of *Rich. 1.* and *Henr. 2.* yet I find it not confirmed by any Constitution or Charter before the time of *King Iohn*, who by his Charter dated the fifteenth of Ianuary, in the sixteenth yeare of his Raigne, granted this priuiledge to the Church of England, in these words, *viz.*

*Quod qualiscunque consuetudo temporibus predecessorum nostrorum
hactenus*

The case of Præmunire.

39

hactenus in Ecclesia Anglicana fuerit obseruata, & quidquid iuris nobis hactenus vindicauerimus, de cetero in vniuersis & singulis Ecclesijs & Monasterijs, Cathedralibus & Conuentualibus, totius regni Angliæ liberæ sint in perpetuum electiones, quorumcumque Prælatorum maiorum & minorum. Salua nobis & heredibus nostris custodia Ecclesiarum & Monasteriorum vacantium qua ad nos pertinent. Promittimus etiam quod nec impediemus nec impediri permittemus per ministros nostros, nec procurabimus, quin in vniuersis & singulis Monasterijs & Ecclesijs postquam vacuerint prælatura quæcumque voluerint liberè sint præficient electores Pastorum, petita tamen a nobis prius & heredibus nostris licentia elegendi quam non denegabimus nec differemus: Et similiter post celebratam electionem, nositer requiratur assensus, quem non denegabimus, nisi aduersus eandem rationabile proposuerimus, & legitimè probauerimus propter quod non debemus consentire, &c.

When Canonical election began first in England.

Buco returne to the cause of his great quarrell with the Pope. The Sea of Canterbury being voyd, the Monkes of Canterbury suddenly and secretly without the Kings licence elected one Reignold their Subprior to be Archbishop, who immediately posted away to be confirmed by the Pope. But when hee came there, the Pope reiected him because he came not recommended from the King. Hereupon the Monkes made suite to the King to nominate some fit person to whose election they might proceed. The King commends John Gray Bishop of Norwich his principall Counsellor, who was afterward Lord Iustice of this kingdome, who with a full consent was elected by them, and afterwards admitted and fully inuested by the King. These two elections bred such a controuersie, as none might determine but the Pope, who gaue a short rule in the Case, for he pronounced both elections void, and caused some of the Monkes of Canterbury who were then present in the Court of Rome, to proceed to the election of Stephen Langton, lately made Cardinall at the motion and suite of the French King: who being so elected was forthwith confirmed and consecrated by the Pope, and recommended to the King of England with a flattering letter, and a present of foure Rings set with precious stones, which were of great value and estimation in those daies. Howbeit the King more esteeming this Jewell of King Iohns the Crowne, namely, the patronage of Bishopricks, returned a round and Kingly answer to the Pope, That inconsiderately, King Iohns round and Kingly letter to the Pope, and

King Iohns round and Kingly letter to the Pope.

and

The case of Præmunire.

and rashly he had cassed and made void the election of the *Bishop of Norwich*, and had caused one *Langton* a man to him vnknowne, and bred vp and nourished amongst his mortall enemies, to be consecrated *Archbishop*, without any due forme of election, and without his Royall assent, which was most of all requisite by the ancient lawes and customes of his Realme. That he merueiled much, That the Pope himselfe and the whole Court of Rome did not consider, what a precious account they ought to make of the King of Englands friendship, in regard that his one kingdome did yeeld them more profit and reuenew than all the other countries on this side the *Alpes*. To conclude, he would maintaine the liberties of his Crowne to the death, he would restraine all his subiects from going to *Rome*. And since the *Archbishops*, *Bishops*, and other Prelates within his dominions were as learned and religious as any other in Christendome, his subiects should bee iudged by them in Ecclesiasticall matters, and should not need to runne out of their owne countrey, to beg Iustice at the hands of strangers.

*The Pope
curseth the
King, & in-
terdicteth
the Realme.*

But what followed vpon this? The Pope after a sharpe reply sendeth forth a *Bull* of *malediction* against the King, and of *interdiction* against the Realme, whereby all the Churches in England were shut vp, the Priests and religious persons were forbidden to vse any *Liturgies*, or Diuine seruice, to marry, to bury, or to performe any Christian duty among the people. This put the King into such a rage, that he on the other part seised the temporalties of all *Bishops* and *Abbots*, and confiscated the goods of all the Cleargie. Then doth the Pope by a solemne sentence at *Rome* depose the King, and by a *Bull* sent into England, dischargeth his subiects of their allegiance, and by a *Legate* sent to the King of *France*, gaue the kingdome of England to him and his successors for euer.

These things brought such confusion and miserie to all estates and degrees of people in England, as the King became odious to all his subiects, as well to the Laytie as to the Cleargie. For as the *Bishops* and religious people cursed him abroad, so the *Barons* tooke armes against him at home, till with much bloudshed they forced him by granting the *great Charter* to restore *King Edwards* lawes containing the antient liberties of the subiects of England. The Pope being a spectator of this *Tragedy*,

The case of Præmunire.

94

gedy, and seeing the King in so weake and desperate estate, sent a *Legate* to comfort him, and to make a reasonable motion vnto him; to wit, that he should surrender and giue vp his Crowne and kingdome to the *Pope*, which should be regranted vnto him againe to hold in *Feefarme* and *vassalage* of the *Church of Rome*. And that thereupon the *Pope* would blesse him and his Realme againe, and curse his rebells and enemies in such sort as hee should be better establisht in his kingdome then he was before. In a word, this motion was presently embraced by that miserable King, so as with his owne hands he gaue vp the Crowne to the *Popes Legate*, and by an instrument or Charter sealed with a *Bull* or scale of gold, he granted to God and the *Church of Rome* the *Apostles Peter and Paul*, and to *Pope Innocent the third* and his successors, the whole kingdome of *England*, and the whole kingdome of *Ireland*; and tooke backe an estate thereof by an instrument sealed with *Lead*, yeelding yearly to the *Church of Rome* ouer and aboue the *Peter pence* a thousand marks sterling, viz. seuen hundred markes for *England*, and three hundred markes for *Ireland*, with a flattering sauing of all his liberties and Royalties. The *Pope* had no sooner gotten this conueiance, though it were void in law, but he excommunicateth the *Barons*, and repeales the *great Charter*, affirming that it contained liberties too great for his subiects, calls the *King* his *vassall*; and these kingdomes *Saint Peters patrimony*, grants a generall *Bull of Prouision* for the bestowing of all Ecclesiasticall benefices, and takes vpon him to be absolute and immediat Lord of all. And thus vnder colour of exercising *iurisdiction* within these kingdomes, the *Pope* by degrees, got the very kingdoms themselues. And so would hee doe at this day, if the King would giue way to his *iurisdiction*.

But what vse did the *Pope* make of this grant and surrender of the Crowne vnto him? what did he gaine by it, if our Kings retained the profits of their kingdomes to their owne vse? Indeed we doe not find, That the *Feefarme* of a thousand markes was euer payd, but that it is all run in arreare till this present day. For the troth is, the *Court of Rome* did scorne to accept so poore a reuenew as a thousand markes *per annum* out of two kingdomes. But after the death of King *Iohn*, during all the raigne of *Henr. 3.* his sonne, the *Pope* did not claime a Seigniorie or a rent out of *England* and *Ireland*, but did endeauour tot
conuer

The case of Præmunire.

conuert all the profits of both lands to his owne vse, as if hee had beene seised of all in demefne. For whosoever will read *Matth. Paris.* his story of the time of *King Henr. 3.* will say these things spoken of before, were but the *beginnings of evils.* For the exactions and oppressions of the *Courts of Rome* were so continuall and intollerable, as that poore Monke who liued in those times, though otherwise he adored the *Pope*, doth call England *Baalams Ass* loaden, beaten, and enforced to speake, doth call the *Court of Rome Charybdis* and *barathrum auaritia*, the *Popes Collectors Harpies*, and the *Pope* himselfe a *Stepfather*, and the *Church of Rome* a *Stepmother.* He sheweth that two third parts of the land being then in the hands of Churchmen, the entire profits thereof were exported to enrich the *Pope*, and the *Court of Rome*, which was done for the most part by these two waies and meanes. First by conferring the best Ecclesiasticall benefices vpon *Italians*, and other strangers resident in that Court, whose farmers and factors in England tooke the profits, turned them into money, and returned the money to *Rome.* Secondly, by imposing continuall taxes and tallages (worse than *Irish cuttings*) being sometimes the tenth, sometimes the fifteenth, sometimes the third, sometimes the moytie of all the goods, both of the Cleargie and Laytie, vnder colour of maintaining the *Popes* holy warres against the Emperour and the Greeke Church, who were then said to be in rebellion against their Lady and mistresse the *Church of Rome.* Besides, for the speedy leuying and safe returne of these moneyes, the *Pope* had his *Lumbards* and other *Italian Bankers* and *usurers* resident in *London* and other parts of the Realme, who offered to lend and disburse the moneys taxed, and returne the same by exchange to *Rome*, taking such penall bands, the forme whereof is set downe in *Matth. Paris.* and such excessiue vsury, as the poore religious houses were faine to sell their Chalice and Copes, and the rest of the Cleargie and Laity had their backs bowed, and their estates broken vnder the burthen. Besides, the *Pope* tooke for perquisites and casualties, the goods of all Clarkes that died intestate, the goods of all Vsurers, and all goods giuen to charitable vses. Moreouer hee had a swarme of *Friers* (the first corrupters of Religion in England) who perswaded the Nobility and Gentry to put on the signe of the Crosse, and to vow themselues to the holy warres, which they had no sooner

ner done, but they were again perswaded to receiue dispensations of their vows, & to giue mony for the same to the *Church of Rome*. I omit diuers other policies then vsed by the *Pope Collectors* to exhaust the wealth of the Realme, which they affirmed they might take with as good a conscience as the *Hebrewes* tooke the Jewells of the *Egyptians*. Briefely, whereasthe King had scarce meanes to maintaine his Royall family, they receiued out of England seuentie thousand pounds sterling at least, yearly, which amounteth to two hundred and tennethousand pounds sterling of the moneys currant at this day. Besides, they exported fixe thousand markes out of Ireland at one time, which the Emperour *Fredericke* intercepted. Lastly, the King himselfe was so much dejected, as at a Royall feast hee placed the *Popes Legate* in his owne Chaire of Estate, himselfe sitting on his right hand, and the *Bishop of Yorke* on his left; *non sine multorum obliquantibus oculis*, saith *Matth. Paris*.

Thus we see the effect of the *Popes* pretended *iurisdiction* within the dominions of the King of England. We see to what calamity and seruitude it then reduced both the Prince and people. Was it not therefore high time to meet and oppose those inconueniences? Assuredly if King *Edward 1.* who was the Sonne and heire of *Henn. 3.* had inherited the weaknes of his father, and had not resisted this vsurpation and insolencie of the *Court of Rome*, the *Pope* had bene proprietor of both these Ilands, and there had bene no King of England at this day.

But King *Edward 1.* may well be styled *vindex Anglica libertatis*, the *Moses* that deliuered his people from slavery and oppression: and as he was a braue and victorious Prince, so was he the best *Pater patria* that euer reigned in England since the *Norman Conquest*, till the Coronation of our gracious Soueraigne. At the time of the death of his father he was absent in the warre of the holy land, being a principall Commander of the Christian Armie there, so as he returned not before the second yeare of his raigne. But hee was no sooner returned and crowned, but the first worke he did, was to shake off the yoke of the *Bishop of Rome*. For the *Pope* hauing then summoned a generall Counsell, before he would licence his *Bishops* to repaire vnto it, he tooke of them a solemne oath, that they should not receiue the *Popes* blessing. Again, the *Pope* forbids the King to warre

King Edw. 1. opposeth the Popes vsurpation.

The case of Præmunire.

warre against *Scotland*, the King regards not his prohibition : he demands the first fruits of Ecclesiasticall liuings, the King forbids the payment thereof vnto him. The Pope sendeth forth a general *Bull* prohibiting the Clergie to pay subsidies or tributes temporall Princes. A tenth was graunted to the King in Parliament, the Cleargie refused to pay it : the King seifeth their temporalties for their contempt, and got payment notwithstanding the Popes *Bull*. After this hee made the statute of *Mortmain*, wherby he brake the Popes chiefe net, which within an age or two more would haue drawne to the Church all the temporall possessions of the kingdome, &c. Againe, one of the Kings subiects brought a *Bull of excommunication* against another, the King commandeth he should bee executed as a traytor, according to the ancient law. But because that lawe had not of long time beene put in execution, the Chancellor and Treasurer kneeled before the King, and obtained grace for him, so as he was onely banished out of the Realme. And as he iudged it treason to bring in *Bulls of excommunication*, so he held it a high contempt against the Crowne, to bring in *Bulls of Prouision*, or *breefes of citation*, and accordingly the law was so declared in Parliament 25. *Edw. 1.* which was the first statute made against *Prouisors*, the execution of which law, during the life of King *Edw. 1.* did well nie abolish the vsurped iurisdiction of the *Court of Rome*, and did reuiue and restore againe the ancient and absolute Soueraigne of the King and Crowne of England.

*E. 2. suffereth
the Pope to
vsurpe again*

His successor *K. Edw. 2.* being but a weake Prince, the *Pope* attempted to vsurpe vpon him againe, but the Peeres and people withstood his viurpation : And when that vnhappy King was to be deposed, amongst many articles framed against him by his enemies, this was one of the most heinous, that hee had giuen allowance to the *Popes Bulls*.

Againe, during the minority of *King Edw. 3.* and after that, in the heat of the warres in *France*, the *Pope* sent many *Breefes* and *Bulls* into England, and at last presumed so farre, as that he gaue an *Italian* the title of a *Cardinall* in England, and withall by his *Bull* gaue him power to bestow all Ecclesiasticall promotions as they should fall void from time to time. This moued the King and the Nobility to write to the *Pope*, to this effect : wee and our ancestors haue richly indowed the Church of Eng-
land,

land, and haue founded Abbeyes and other religious houses for the iurisdiction of our people, for maintenance of hospitalitie, and for the aduancement of our countrymen and kinsmen. Now you prouide and place strangers in our benefices, that come not to keepe residence thereupon, and if they come, vnderstand not our language, and some of them are subiects to our mortall enemies: by reason whereof our people are not instructed, hospitalitie is not kept, our schollers are vnpreferred, and the treasure of the Realme is exported. The Pope returneth answer, That the Emperour had lately submitted himselfe to the Church of Rome in all points, and was become the Popes great friend, and in menacing manner aduised the King of England to doe the like. The King replies, That if the Emperour and French King both should take his part, he was ready to giue battaile to both, in defence of the liberties of his Crowne. Hereupon the seuerall statutes against *Prouisors* before recited, were put in execution so seuerely, as the King and his subiects enioyed their right of patronage cleerely; and their exemption of Clerkes tooke no place at all, for that the *Abbot of Waltham*, and *Bishop of Winchester* were both attained of high contempts, and the *Bishop of Ely* of a capitall offence, as appeareth in the Records of this Kings raigne. Yet during the *honage of Richard. 2.* they began once againe to encroach vpon the Crowne, by sending *Legates*, and *Bulls* and *Breefes* into England, whereof the people were so sensible and impatient, as that at their speciall prayer this law of *16. Rich. 2.* whereupon our indictment is framed was enacted, being more sharpe and penall, than all the former statutes against *Prouisors*. And yet against this King, as against *Edw. 2.* it was objected at the time of his depriuation, that he had allowed the Popes *Bulls*, to the enthralling of the Crowne.

E. 3. resisteth the usurpation of the Pope.

King Rich. 2.

After this in the weake time of King *Henr. 6.* they made one attempt more to reuiue their vsurped iurisdiction, by this policy, The Commons had denied the King a Subsidy, when he stood in great want of moneyes; The *Archbishop of Canterbury* and the rest of the *Bishops* offered the King a large supply of his wants if he would consent, that all the lawes against *Prouisors*, and specially this law of *16. Rich. 2.* might bee repealed. But *Hamsfry Duke of Gloucester*, who had lately before cast the Popes Bull into the fire, did likewise cause this motion to be reiected.

1590

R

So

The case of Præmunire.

So as by speciall providence these lawes haue stood in force euen till this day in both these kingdomes.

*The Eui-
dence against
Laloh.*

Then the *Asturney generall* descended to the evidence, whereby he prooued fully all the parts of the indictment. First, it was prooued by *Lalors* owne confession vpon seuerall examinations taken before the *Lord Deputie*, and *Lord Chancellor*, and others, that he had accepted the office and title of *Vicar Generall* in the Dioceses of *Dublin*, *Kildare*, and *Fernes*, by vertue of the *Popes Bull*. Secondly, it appeared by the copies of sundry letters found among his papers at his apprehension, that hee styled himselfe the *Popes Vicar*, in this forme, *Robertus Dublinien. & Kildaren. & Fernen. Diocæs. Vicarius Apostolicus*. Thirdly, there were produced the copies of diuers Acts, & Instruments written for the most part with *Lalors* owne hand, some of institutions of Popish Priests to benefices, others of dispensations with marriage within the degrees, others of diuorces, others of dispensation for non payment of Tythes. Whereby it was manifestly prooued, that hee did execute the *Popes Bulls*, in vsurping and exercising Episcopall iurisdiction as *Vicar Generall* of the Sea Apostolike, within the Dioceses before named.

To this evidence he made a threefold answer, first, that hee was no suiter for the office of *Vicar generall*, but it was imposed on him, and he accepted *virtute obedientie*, onely to obey his Superiors: next, That he did exercise the office of *Vicar generall in foro conscientie tantum*, and not *in foro iudicij*. And lastly, that those copies of institutions, dispensations, and diuorces were many of them written with his mans hand, as precedents of such Acts and instruments, without his priuity or direction. Hereupon *Sir James Ley* chiefe Iustice told him, that he could not well say, that he accepted that vnlawfull office *virtute obedientie*, for there was no vertue in that obedience: that he ow'd an obedience to the lawe, and to the King, who is the true *Superior and Soueraigne* ouer all his subiects, and hath no Peere within his dominions, and that the Superiors, whom he meant and intended, were but vsurpers vpon the Kings iurisdiction, and therefore this excuse did aggrauate his contempt, in that it appeared hee had vowed obedience to those who were apparant enemies to the King & his Crown. And though it were manifest that he exercised iurisdiction *in foro iudicij* (for

o2 81

euery

euery institution is a iudgement, and so is euery sentence of dis-
norce yyet were his offence nothing diminished, if he had exe-
cuted his office of *Vicar generall in foro conscientie tantum*, for
the court of mans conscience is the highest tribunall, & wher-
in the power of the keyes is exercised in the highest degree.

Hereunto the *Attorney generall* tooke occasion to adde thus
much, That *Lalor* had committed these high offences not one-
ly against the lawe, but against his owne conscience, and that
he was already condemned *in foro conscientie*. For that he vpon
his second examination had voluntarily acknowledged him-
selfe not to be a lawfull *Vicar generall*, and that he thought in
his conscience, he could not lawfully take vpon him the said of-
fice. He hath also acknowledged our Soueraign Lord K. *James*
to be his lawfull, Chiefe, and Supream Gouvernour, in all cau-
ses as well *Ecclesiasticall* as *Ciuile*, and that he is in conscience
bound to obey him in all the said causes, and so forth as it is
contained in his acknowledgement or confession before set
downe, which being shewed forth by the *Attorney generall*,
the Court caused it to be publicly read, and therupon deman-
ded of *Lalor*, if that were not his free and voluntary confession
signed with his owne hand, and confirmed by his oath, be-
fore the Lord Deputie and Counsell. He was not a little aba-
shed at the publishing of this acknowledgement and confession,
in the hearing of so many principall Gentlemen, to whom he
had preached a contrary doctrine: therefore said he, the shew-
ing forth of this confession is altogether impertinent and be-
sides the matter. Howsoever hee could not deny but that he
made it, and signed it and swore it, as it was testified by the
Lords Deputie and the rest.

*Lalors con-
fession pub-
licely read.*

Then was it demanded of him, whether since the making of
this confession, he had not protested to diuers of his friends,
that he had not acknowledged the Kings supremacie in *Ecclesi-
asticall causes*: his answer was, That indeed he had said to some
of his friends who visited him in the *Castle of Dublin*, that he
had not confessed, or acknowledged, that the King was his
Supream Gouvernour in *spirituall causes*, for that the truth is, in
the confession there is no mention made of *spirituall causes*, but
of *Ecclesiasticall*.

This is a subtile euasion indeed, said the *Attorney generall*, I
pray you what difference doe you make between *Ecclesiasticall*
causes,

The case of Præmunire.

causes, and spirituall causes. This question said *Lalor* is sudden and vnexpected at this time, and therefore you shall doe well to take another day to dispute this point. Nay, said the *Attorney generall*, we can neuer speake of it in a better time, or fitter place, and therefore though you that beare so reuerend a title, and hold the reputation of so great a Clarke, require a further time, yet shall you heare, That we Lay men that serue his Maiestie, and by the dutie of our places are to maintaine the iurisdiction of the Crowne, are neuer so vnprovided but that we can say somewhat touching the nature and difference of these causes.

When the distinction of spirituall causes, from Ciuile and temporall causes, did first begin in point of iurisdiction. Assuredly for the space of three hundred yeares after Christ, this distinction was not knowne or heard of in the Christian world. For the causes of *Testaments*, of *Matrimonie*, of *Bastardy*, and *Adultery*, and the rest which are called Ecclesiasticall or spirituall causes, were meerely Ciuile, and determined by the rules of the *Ciuile law*, and subiect onely to the iurisdiction of the *Ciuile* Magistrate, as all *Ciuitians* will testifie with me.

But after that the Emperours had receiued the Christian faith, out of a zeale and desire they had, to grace and honor the learned and godly *Bishops* of that time, they were pleased to single out certaine speciall causes, wherein they granted iurisdiction vnto the *Bishops*: namely, in cases of *Tythes*, because they were paid to men of the Church: In causes of *Matrimony*, because marriages were for the most part solemnized in the Church: In causes *Testamintary*, because testaments were many times made *in extremis*, when Churchmen were present, giuing spiritual comfort to the testator, & therefore they were thought the fittest persons to take the probates of such *testaments*. Howbeit these *Bishops* did not proceed in these causes according to the Canons and decrees of the Church (for the *Canon law* was not then hatched or dream't off) but according to the rules of the *Imperiall law*, as the Ciuile magistrate did proceed in other causes, neither did the Emperours in giuing this iurisdiction vnto them, giue away their own Supreme and absolute power, to correct and punish these iudges, as well as others if they performed not their seuerall duties. This then is most certain, that
the

the *primative iurisdiction* in all these causes, was in the *Civile magistrate*, and so in right it remaineth at this day, and though it be deriued from him, it remaineth in him, as in a fountaine. For euery Christian Monarch (as well as the godly Kings of Iuda) is *custos viriusque tabula*, and consequently hath power to punish not onely Treason, Murder, Theft, and al maner of force & fraude, but incest, adultery, vsury, perjury, simony, sorcery, idolatry, blasphemy: neither are these causes in respect of their *owne quality and nature*, to be distinguished one from another, by the names of *Spiritual* or *Temporall*. For why is *adultery* a *spirituall* cause, rather than *murder*, when they are both offences alike against the *second table*: or *idolatry* rather then *perjury*, being both offences likewise against the *first table*. And indeed if wee consider the *natures* of these causes, it will seeme somewhat absurd, that they are distinguished by the name of *spirituall* and *temporall*, for to speake properly, that which is opposed to *spirituall*, should be termed *carnall*: And that which is opposed to *temporall* should be called *eternall*. And therefore if things were called by their proper names, *adultery* should not be called a *spirituall* offence, but a *carnall*: But shall I expresse plainly and briefly, why these causes were first denominated, some *spirituall* or *Ecclesiasticall*, and others *temporall* and *civile*?

Truely, they were so called not from the *nature* of the causes, as I said before, but from the *quality* of the persons, whom the Prince had made iudges in those causes. The Cleargie did study *spirituall* things, and did professe to liue *secundum spiritum*, and were called *spirituall men*, and therefore they called the causes wherein Princes had giuen them iurisdiction, *spirituall causes*, after their owne name and quality. But because the *Lay magistrates* were said to intend the things of this world, which are *temporall* and transitory, the Cleargie called them *secular* or *temporall men*, and the causes wherein they were iudges, *temporall causes*. This distinction began first in the *Court of Rome*, where the Cleargie hauing by this iurisdiction gotten great wealth, their wealth begot pride, their pride begot ingratitude towards Princes, who first gaue them their iurisdiction, and the, according to the nature of all vngratefull persons, they went about to extinguish the memory of the benefit: for whereas their iurisdiction was first deriued from *Cesar*, in the execution whereof they were *Cesars iudges*, so as both their Courts

The case of Præmunire.

and causes, ought still to haue born *Cæsars image & superscription*, as belonging vnto *Cesar*, They blotted *Cæsars* name out of the style of their Courts, and called them *Courts Christian*, as if the Courts holden by other magistrates had bin in comparifon but Courts of *ethnicks*, and the causes which in their nature were meereley *Ciuile*, they called *Spirituall* and *Ecclesiasticall*. So as if the Emperour should challenge his Courts, and causes againe, and say, *Reddite Cæsari, quæ sunt Cæsaris*. they would all cry out on the contrary part and say, *dote Deo quæ sunt Dei*, our Courts beare the name and title of *Christ*, the superscription of *Cesar* is quite worne out, and not to be found vpon them. And this point of their policy is worth the obseruing, that when they found their iurisdiction in matrimoniall causes, to be the most sweet, and gainefull of all other (for of *Matrimony* they made matter of money indeed) to the end that *Cesar* might neuer resume so rich a perquisit of their spirituall iurisdiction, they reduced *Matrimony* into the number of the 7. *Sacraments*. After which time it had been *sacriledge*, if the *Ciuile magistrate* had intermedled with the least matter that had relation to *Matrimonie*, or any dependencie thereupon. So then yet appeareth, that all causes whereof *Ecclesiasticall* or *Spirituall* persons haue cognitans, or iurisdiction by the grants or permission of Princes, are called *Ecclesiasticall* or *Spirituall causes*. And as all their *Courts* are called *Spirituall Courts*, so all causes determinable in those Courts are called *Spirituall causes*. And therefore where *M. Lator* hath acknowledged the Kings Maiestie to be Supream Governour in all *Ecclesiasticall causes*, he hath therein acknowledged the Kings Supremacie in all *Spirituall causes*, wherein he hath but rendered to *Cesar* but that which is *Cæsars*, and hath giuen vnto his Maiestie no more, than all the *Bishops* of *England* haue yeelded to his predecessors, not onely in this latter age, but also in former times both before and since the *Conquest*, as hath bin before at large expressed.

Here the day being farre spent, the Court demanded of the prisoner, if he had any more to say for himselfe, his answer was, That he did willingly renounce his office of *Vicar general*, And did humbly craue his Maiesties grace and pardon. And to the end, he desired the Court to moue the *L. Deputy* to be fauourable vnto him. Then the Iury departed from the Barre, and returning within halfe an houre, found the prisoner guiltie

The case of Præmunire.

99

guilty of the contempts whereof he was indicted. Whereupon
the *Solicitor generall* mooued the Court to proceede to
iudgement: And Sir *Dominicke Sarffield*, Knight, one
of the Iustices of his Maiesties chiefe place
gaue iudgement according to the forme
of the statute, whereupon the indi-
cment was framed.

FINIS.



LE
PRIMER RE-
PORT DES CASES
ET MATTERS EN LEY
resolues & adiudges en les Courts
del ROY en IRELAND;

Collect & digest per S.
JOHN DAVYS Chiualer, Atturney
Generall del Roy en cest
Realme.

•Liber librum aperit.



LONDON,
Printed for the Company of
Stationers: 1628: at f.

*et les fait imprimer a Dublin 1625. m. f. e.
la fol. des prefaces et des cas de l'Es-
manire a plus large. q. sey, mes m.
loals autr cas ilz accord*

8

Les six lequiers eussent payable y chosec idemgen si l'exportation des comodities auant de gues les marchés de l'etranger parant un tiers port plus, si commission de port, si ains y killedegrs a sur grant y le chort de 2. E. 2.
Over. Eliz. 165. b.

3. Prisage, est custome poise de wines & toutes sorts, et est en certenty, 1. tunnes de Wines bagz de chescun Alef inde out, 10. tunne ou plus. 2. En tunne destre prise devant l' moel del Alef, & l' aut derrière le Pass. Et si ceo n' cest custome es port del marchandise imported. 3. Prise in pence est appel Prisage.

Les cōstz customs de Prilage sūit payable en Engleterre p
tous marchans Deniers, s. Aliens, devant le dit chanc
de 3 s. E. 1. 1. q. 1. le Roy revēit al Marchantz frantz
pries : s en meisme le chart est express que en conside
ration de ceo, les Marchantz strangers ont grant tō payer al
roy s. s. s. Nomine customs, s. 1. de quolibet Dolio vini,
quod adducunt vel adduci faciunt infra regnum, &c. Et custom
de 2 s. 1. del tirme est paye en Engleterre appel Butclercage, s. pay
able la p tous Marchantz strangers, vi. stat. de carrat. ad
Scacc. 1 s. E. 2.

Et on en lègue de ceux & hall duties, qui sont proprement appel customs,

pour le Original de votre commande.

Le dit ancien & grand costume est parcell si au-
cient enheritance de la Cozue, & sy auient que la Co-
zue meisme, Inheret scepro, & est due de common droit. et
par exception, & pour ce regard ou benivolence des
Seigneurs, ou p Act de Parliament. Hier 1, Eliz. & 1.
Ce cas auient fait rai bon del Justice, gouver. et
paier communitiez del noire Roie, viz. 42 vol. 100 folio,
& 100 folio, pour ce regard per les autres depandant la
terre,

* not a just: 58 P. 59. + (Cob)
prove a drivers arguments et
records of wo field grantral
Roy & Parshant in 3. Col.
appel Wash. g.

Payable pur Marchandises

9

testes, sauns industrie des inhabitants, & sont: Reuers les
 Goutte coll riches de Engleterre. Car invention & industrie
 des homes, ont eue a produire Tynne, & Plombe, & Draper,
 & Iron en feveral Ages. Mais les 3. primer commodites,
 viz. Wooll, Woolfels, & Hydes furent proprement & anti-
 entement dit, les Staple commodites del Reialme (coment
 que per le statute de 27. E. 3. c. 1. Plombe soit au ppy declare
 desre un Staple commodite, & par ceo cestuy que obligi
 en Statute staple, conust que il est indebt, Pro laniis, corijs &
 plumbis, &c.) Et furent appell Staple commodites, par
 ceo que furent dest post al Staple del Roy, desre exported
 la, & namp alioys, & le meillor Collection des Customs due
 al Roy. Vide les Statutes de 27. E. 3. cap. 1. & 43. E. 3. c. 1.
 Or est expresse en queux Villes de Engleterre, Ireland, &
 Gales les Staples del Roy furent establi par le exporta-
 tion de ceux commodites. Et appiert au ppy per diuers sta-
 tutes, que Caley fut ascun foys appoint pur un general
 Staple, yncore ceo fut toll & ousted arriere, & les antiee Sra-
 ples reestabli.

Or est pur ceux 3. primer commodites tant seulement viz.
 Wooll, Woolfels, & Hydes, le dit antient & certaine Customs
 fait due & payable. Car pur Plombe, coment que fut dit un
 Staple comodite, le petit Customs de 3. d. sur le pound ran-
 rum fut pay, come appiert per le statute de 27. Ed. 3. cap. 1.
 Et in lib. Rubro Scaccar. hic fol. 8. a.

Et que le Roy ad estate de inheritance en cest Grand &
 Antient Customs, appiert pleinement, 31. H. 8. Dier 43. b.
 ou est dit, que Customs est inheritance del Roy per court
 de Common ley, & Subsidie est un taxe assise per Par-
 liament. Vide au ppy, 1. Mai Dier 91. ou le Roy E. 6. ad grant
 licence al un Marchant stranger, de transporter toutz Mer-
 chandises payant pro Customs & subsidijs tot & tant as de-
 nariorum summas, quot & quantas ascun Anglois marchand
 ou Denizen payeroit, & nos vltra. Et fut resolu per toutz
 les Justices, que apres le mozt del E. 6. le grant fut done
 pur le Customs, & boyde per le Subsidie: par ceo que le
 Roy ad inheritance en le Customs come prerogative annee
 a son Corou, & en les Subsidies il ne mozt estate luyque
 par son viz, per act de Parliament. Junt. 9. H. 6. 1. & 2. La
 Roigne ad part de la Douer assigne, Ex magna Customs

Le Case de Customs.

de London: que est arguist, que le Roy ad greindet estate en le Grand Customs que par son vie demaine: Et p' ceo, le opinion de Babington la, que le Roy nad enheritance en le Grand Customs, mes en le Petit Customs tantum, ne ad aucun colour de reason. Ilint per le estatute de 18. Hen. 6. Est p'ouide, que les Juges des Justices serrent p'ceptu- alint par hoys des p'imer deniers p'ouenantz des Cu- stomes, que ne puissoit estre, si le roy ne auoit estate de per- petuite en les Customs. 1. H. 7. 4. 2. D'acchinement, est un rule infallible, que si home ad chose de common droit, & per prescription, que si ad estate de ses simple en mesme la chose car de particulier estate le commencement poert, & doet estre monstre. 1. H. 7. 15. 2.

Des pur ceo que chescun chose que est due de common droit, et p' prescription, doet auer reasonable cause de Co- mancement; fuit note & observe que, cest Customs fuit p'primerment pay al Cozone, pur 4. p'ncipall causes, ou reasons.

1. Pur Conge de departer le Realme, & de carrier les co- modities del Realme hoys de ceo, Vide Dier 1. Eliz. 165. b. & le estatute de 18. E. 3. cap. 3.

2. Pur le interest que le Roy ad en le Mer, & en les Ba- ches de ceo, 1. Affis. pl. 93. 15. Eliz. Dier 326. b. *de 56. p. m. m. m.*

3. Pur ceo, que le roy est Gardein de tous les Ports & hauens del Realme, qui sont Ostia seu Ianua regni, & le roy est Custos totius regni.

4. Pur wastage, & protection des marchants sur le Mer, vers les ennemis del Realme, & vers Pirats, qui sont co- mmon enemies de toutes Nations.

le petit et novel customs.

Le petit & novel Customs payable per Marchant Res- gers, solument auoet commencement en temps, Ed. 1. Car deuant cest temps les duties payable per Marchant Deau- gers p' tous forain commodities importez (except wines) & pur tous Native commodities exportez (except les ditz Staplewares, de Wool, Woolfels, & Hydes) furent d'acord- ed, que le roy per son prerogative Prisot a c'ble, & a son p'prie, tant a ditz portons de leur marchandises, quant il ad besoyn, per moine de p'prie, quant fuerent tous foits l'acordance.

Des le Roy E. 1. par son Charter dar 11. Februarii an. 1. de

payable pur Merchandises.

10

De son Roiaume, en fauor des Marchant strangers, & b' tra-
her tout commerce, Remit a eux toutz p'sses, et grant a
eux diuers autres p'iuiledges. Et pro supradictis libertati-
bus obtinendis, & p'is remittendis (ceux sont les parols del
charter) supradicti Mercatores vniuersi & singuli pro se, &
omnibus alijs de partibus suis, concorditer & vnanimiter con-
cesserunt q' ils payeront al roy, & ses heirs Tres denarios de
libra p' toutz Merchandises impo'ted ou expo'ted p' eux,
come est expresse plus particulièrement en le dit charter, que
est desre troue en le office de chiefe Remembrancer en le
Eschequer del Engleterre, & in libro Rubro Scaccarij hic. Et
cest charter del E. 1. en toutz points, fuit ratifié & confirme
p' act de Parliament, 17. E. 3. c. 16. Et ceo est le originall
del petit Cusume.

Mes est desre note, que cest petit cusume p' foraigne
commodities, fuit accept per le Roy, quantz fois que petit
quantity de tiels foraigne wares fuit impo't en Engleterre.
Car en temps Edw. 1. Et ap'ez ceo, en temps Edw. 3. les
nature commodities de Engleterre expo'ted fueront de
greinder quantite & value per 1. parts de 3. al meines,
que les foraigne marchandises impo'ted: per que le roy
H. 3. e'aloit cy grand reuenue hors del nature commodities
de ses dominions: que est note de bone husbandrie en cest
roy. Car Oportet Patrem familias Vendac'e esse, & non Em-
cem. Come Caro le seignior disoit. Mes o'z est tout cōtra-
ry: Car a cest t'ps, le Outgate e' meins que le Ingate: les
fozeine wares impo'ted sont de greinder quantite & value
per 1. p'ts. que nostre nature commodities expo'ted. Que
est grand honte a nostre Nation, desre ilust en amo'z ou
les Mercery & Grocery wares impo'ts per strangers, & b'
exp'nder sur eux plus que le value de toutz les staple &
reall commodities de nostre Pais: que sera en fine le ruin
del Commonwealth.

1413. 3. P'ssage de woines, est uny custom due p' prescripti-
on, & parcel del antient enheritance de la corone. Et que le
Roy ad enheritance en le P'ssage de woines, ap'iert per
les charters grants al citiens de London, & al ceuz de
les Cinque Ports desre discharge de P'ssage en toutz
Ports, a toutz t'ours, Vide statut 1. H. 8. cap. 7. Et le com-
te de Dymond ad estate de enheritance en le P'ssage de
woines

Infaga de wmes

2 Just 59. p. aund

Le Case de Customs.

toines en cest Reahne per graunt del Roy. Et le charter de London fuit allow en cest point en le Eschequer de Engleterre. 44. Eliz. Mes le questis la fuit, si un Citisen de London q ne ad famelp, ne pay Scot & Lot, mes solumne en le meason d'un autre, aura le benefit del dit Charter. En le argument de quel Case, Coke donques Attorney General misoit cest difference de citisens, viz. que il y ad citisen Nomine, citisen Re, & citisen Re & nomine. Mes fuit resolve que solumment le citisen Re & nomine, viz. cestuy que est seermain de London, & est auy enhabitant, & pay Scot & Lot la, terra free de Prisage per le dit Charter. Pur le originall de Butlerage que est pay per Marchant strangers, estoit commencement per le Charter de 31. E. 1. come est auantdit, & est limit desire pay al roy & ses heirs en perpetuite.

Et ceo est le Nature, Originall, & Difference de les quantite Duties payable pur marchandises, queuz son proprement appell Customs, & sont le enheritance de la Couronne.

notel subsidies per Parliamt

Subsidies auy son duties payable pur marchandises exported & imported, mes sont grant per act de Parliamt. Dier 31. H. 8. 43. b. 1. Mar. Dier 92. a. Et sont de 3. divers sorts, accordant al diversite des commodites, & sont appell.

1. **Aydes ou Subsidies** esseant grant hozs des dits natue commodities, viz. Wooll, Woolfels, & Hydes, ultra & p. r. le antient Custome auantdit.

2. **Tunnage**, grant hozs de Wines de tous sorts, ultra & p. r. le Prisage, & le dit Custome de 25. de Dolio grant p. r. le Charter de 31. E. 1. & appell Butlerage.

3. **Pondage**, grant hozs de tous commodities imported & exported, except Wines, & les Staple commodities auantdit, & payable per Merchant strangers, ultra & p. r. le Perin custome.

Pur le Originall de ces duties.

1. **Aydes & Subsidies** payable hozs des dits Natue & Staple commodities exported, ne furent soumesoit grant per Parliamt. devant le temps del E. 3. mes a cest Roy per maintenance de ses Guerres en France, per Parliamt.

4 Aydes et subsidies

5-6

34

payable pur Merchandises.

11

grant p. stat a d'v. temps

1 ment. 14.E. 3. (que fuit le p'mier an de son reign d France) un Subsidy fuit graunt de 40. s. hoys de chescun Sacche d Wool. 40. s. d 300. Woolfels, & 4. l. hoys d chescun Last de Wydes. Et ceo de continuer pur un an tantum, & que ap'z les Merchants paieront lorsque l'ancien custome.

2 Ap'z ceo p Parliament 13.E. 3. un Subsidy fuit gese al dit Roy de 50. s. sur chescun Sacche de Wool. 50. s. sur chescun 300. Woolfels, & 5. l. sur chescun Last de Wydes.

3 Per Act d Parliament 31.H. 6. un Subsidy fuit graunt al dit Roy de 43. s. iiii. d. hoys de chescun sacche de Wool, et 43. s. iiii. d. de chescun 240. Woolfels unnes ap'z en mesme l'Parliament cest subsidie fuit abate, & reduce al 33. s. iiii. d. pur sacche de Wool, & 33. s. 4. d. pur 240. Woolfels, & l'p'pement limit pur 5. ans tantum, J'unt que ceuz Wols ou subsidies ne fueront del un certaine quantite ou continuance.

4 Jusques al temps del E. 6. a quel Roy, en le p'mier Parliament de son reign, fait grant un Subsidie de 33. s. 4. d. de chescun Sacche de Wool 33. s. iiii. d. & chescun 240. Woolfels, a iij. l. vi. s. viij. d. de chescun Last de Wydes exposez per Wenzers. Pur chescun Sacche de Wool exposez p Aliens, iij. l. 6. s. iiii. d. et pur chescun 240. Woolfels, 9. l. 6. s. 8. d. & pur chescun Last de Wydes, 3. l. 15. s. 4. d. Et cest subsidie grant de continuer durant le vie naturel del roye & puis le mozt de cest roy, mesme le subsidie ad effect graunt

5. 6. al R. Marie, R. Elizabeth, & al nostre Seignior le roy, qui ore est, durant leur seuerall vies per seuerall Acts de Parliament.

2 Tunnage, que est subsidie hoys de wines d tous l'ors, *2 Tunnage*

1 fuit p'mierement graunt per Parliament 5.R. 2. ou 1. s. de chescun Tonne d wine desles importes en Engleterre, fait graunt al Roy pur 1. ans, & ceo fuit pur maintenance d un

3 flete sur le Mer, a sup'p'ier les Pirates. Ap'z ap'z p Parliament 3. Ed. 4. Tunnage fuit graunt al roy pur terme de son vie naturel en cest maner, viz. 3. s. pur chescun Tonne de wines, & (oultre ceuz 3. s.) pur chescun Tonne de Tyners wines, 3. s. plus. Vide statut. 11 E. 4. cap. 9. par

3 4 subsidie fuit ap'z graunt al H. 3. & E. 6. que cest addicion en temps E. 6. que de chescun Aune d Remis wine n'ap'z pas pay : & puis le temps del E. 6. cest subsidie d Tunnage

Le Case de Customes.

ad estre grant en Engleterre p leuerall Acts de Parliament al **M. Mary**, **M. Elizab.** & al nostre seignior le roy que oze est. 5.6.7.
 Durant leur seuerall naturall vies.

3. *Pondage*

3. Pondage que est subside grant hoys de tous commo-
 ditiez exported et imported, except woines, et les auntient
 Staple woares, vt supra, & payable p tous merchants De-
 nizens et Aliens, est vicesima pars del balew des Merchan-
 dises, viz. xij s. de le pound, et fuit primerment graunt per
 Parliament en Engleterre 31. H. 6. Durant le vie de cest
 Roy: quel graunt fuit immediatement resume. Mes aps
 ceo, viz. 3. E. 4. cest subside de Pondage fuit graunt al dit
 Roy durant son vie: vide stat. 12. E. 4. cap. 3. & puis mesli le
 subside fuit graunt al Hen. 8. durant son vie, & mesli le
 grant ad estre renou al E. 6. **M. Marie**, **M. Elizabeth** & al no-
 stre seignior le roy que oze est, durant leur seuerall vies, p
 leuerall Acts de Parliament en Engleterre. 4.5.6.

Mes icy en cest realm de Ireland le subside de Pondage
 au commencement en cest maner, Anno 14. Ed. 4. un fra-
 ternite des Arms fuit erect p act de Parliament, consistant
 de 13. plus honozable & loialment disposez persons en les
 Counties de Dublin, Kildare, Meth, & Louth: Et un certaine
 number des homes a chival, oue leur pages et des archers
 a chival fuit assigne a eux, oue certaine entertainement et
 wages, payable al cheftun des dits homes a chival, et ar-
 chers. Queux freres des Armes, oue leur dit retinew sont
 tous temps mist a defender le English pale encontre Re-
 bels et Outlawes. Et si l paiement des gages des dits ar-
 chers, & homes a chival, fuit enact, que les dits freres des
 Arms a leur successors aueront, xij s. de le pound de tous
 merchandises imported et exported, hoys de cest Terre de
 Ireland hoys a woines, & les merchandises del freemen
 de Dublin & Drogheda solement except.

11. Apres 16. H. 7. en le Parliament tenu p **Seir Edw. Poy-
 nings** fuit enact, que p tant que le dit xij s. de le pound grant
 al dit Fraternity (que est la appel le Fraternity de S. George)
 fuit assigne et conuert al priant vies, et nemp en discharge
 de publiche suice, si ceo le Roy aueroit le dit Pondage pur
 son ensuient, et si tous autres grants fait del dit Pon-
 dage soient regale et adiudge hold, &c.

12. Les dits 11. ans estant expire, viz. An 15. Hen. 7. nouvel
 Pon-

payable pur Merchandises.

12

Pondage fuit graunt per act de Parliament al dit Roy ses heirs et successors in perpetuity, que un Prouiso, que cest act ne serroit prejudiciall al freemen de Dublin, Waterford, & Drogheda esteat free p Birth, Mariage, ou Prêtishood, &c. Et ainsi le Roy ad estate de Enheritance en cest Subsidy de Pondage en Ireland, ou il si ad ceo forsque durent son natural vie en Engleterre.

3 Imposts ou Impositions sôt l Tierce kind de dutiez payable pur marchandises, & sont aucunfoits rates & assesse per Parliament, & donques sont en nature de Subsidies, & aucun foits sont impose per Prærogative Royall, pur suppofter les necessary charges de la Corone, & donques, Nihil magis justum est, quam quod necessarium est, come un auncient Senatoz de Rome disoit.

Le Impost sur Wines in cest Realme, fuit primerment assesse p Parliament, & limité destre pay pur certaine terme d ans, que lesteant expire, ceo est oze continue per prerogative del Roy.

Ceur, sont les duties payable al Roy de Engleterre p l exportation & importation de marchandises. Et comment que cest reueneue del corone ad estre grandement improoue en cest darreine age, vncore si les customes, subsidies, & impositions d Engleterre sont compare al duties et païments de cest kind, en forein cuntries, serrent troue destre moderate & fort reasonable.

Les auncient Romaines (car cest reueneue payable hors d marchandises, est le plus, auncient, honozable, et reasonable que appartient al aucun Prince ou State) auent ceux duties p nomme d Vectigalia, a mercibus euectis, & inuectis, que l Emperour Iustinian appel Exagogica & Isagogica. Et touchant la nature d eux, les rules de nostre ley sont agreable al ceux d la Imperiall ley.

1 Nous diomus, que custome est l auncient enheritance de la corone d Engleterre, ils dient, Vectigal origine ipsius Cesarum, & Regum patrimoniale est. **2.** En nostre Ley, Wafrage & Protection de Merchants sur le Mer, est un des principall causes de païment de ceux duties: et en la Ley del Empire, Primaria Vectigalium causa, ac ratio fuit

* C est a contra legem et a
cheat la prerogative del Roy.
2 Joh: 58. p. f. 66.

Le Case de Customes.

vt plana, tutaque mercatori pretereunti itinera prestarentur. Et Plin. Lib. 19. c. 4. dit, Merces pretiosæ, vt ex India, Arabia, Æthiopia, tuto à mercatoribus in Europam conueherentur, necessario classem parandam esse aduersus Piraticas incurfiones. Inde maritimi exercitus alendi causa, Vectigal Rubri maris institutum.

Et cest Vectigal, octaua rerum pars erat, & pur ceo, fuit vn foiz des Publicanes, queux fueront appell Octonarij: mes les Merchants queux auoent le p^ruileidge de citizens de Rome, paieront foizque vicesimam partem ou Pondage, & les Publicans ou collecto^rs de cest custome, fueront appel Vicesimarij.

Et ceo fuit le auncient custome payable per Merchants deins le estate del Empire. Et en Britanie, deuant que cest Iland fuit fait p^rouince subiect al Empire, est credible que les Merchants payeront greinder Rates pur Exportation des commodities, que ils payont ore. Car Strabo dit, Britanni Vectigalia tollebant grauia earum rerum, quas in Galliam, tametsi breui maris trajectu, importabant.

Mes a cest iour, est certaine, que en auters Realmes de Europe, les customes sont plus haut et heauy que nostres.

En Spaine, le Roy p^rist octauam parrem de ses proper subiects, mes ò Merchants Strangers il p^rist ascū foizs le cinque part, ascū foizs le quart pt del balue de lour merchandises.

En France, les customes payable pur Strangers amountaunt al huict de Cent. Bodin. de Republ. libr. 6. ca. 2. Mes les impositions & gabels qⁱ le Roy la p^rist de ses subiects p^r Sel, Wine, & Brees, et toutz choses vendible, sont extraordinaire, et foiz excessiue. Mint poet est^r dit del grand Duke de Tuscany, & auters States de Italy.

Le grand seignior ò Turkie p^rist le tenth pt de Merchāt Strangers, et le vint pt ou Pondage de ses subiects.

offices del customes.

Quant a les Officers queux ont a faire oue les customes.

1 Le customer fuit le plus auncient, & al p^rimes le sole Officer, que fuit le collecto^r des customes, et accountable p^r eux al Roy, 9. H. 6. 12. b. 1. H. 7. 4. b.

Après

Payable pur Marchandises

13

2. Apres en aid de customer p trouver les conceallement
et subtraction des customs & subsidies, & p leiser mercha-
dises forstied, le Searcher fuit ordaine.

3. Donqs p ceo que le customer fuit accomptant al Roy,
mes ne puiſſoit estre charge forsq p son proper liuer d Coc-
quets, ou son oath, controller fuit assigne a luy.

4. Darrainint, p disconer et puenf les frauds d tous
ceux, un office de Superuisor ad estre erect.

Cur diuersities, touchant la nature de les seueral di-
ties payable pur marchandises, estant declare & agreee,
le matter fuit consider, viz. Si les points de les se-
uerall charters plead, come auant est monſtre, p le corpozation
de Waterford, soient sufficient warrants a eux, de re-
ceiuer, a leur proper vse, les dits customes & subsidies, & de
faire les dits officers d customer, searcher, et controller des
customes.

Quant al premier charter de le Roy John, p que il grant
al dit Corpozation, Customam vocatam *Le Murage*,
de omnibus rebus venalib' infra dictam ciuitatem emp-
tis seu venditis, adeo bene & integre sicut Burgenſes vil-
lae de Bristol habebant, &c. fuit resoluë, que per ceux
parole nul custome ou subsidie est grant a eux, pur diuers
reasons.

*desfor f p le premier chart de
Waterford et pout pout custome*

1. Pur ceo que Murage nest rien que Toll, payable p re-
paration des Mures, hors de choses vend en Marchet
ouvert per reſaile, N.N.Br. 228. d. ou custome est pay pur
marchandises impoſted ou expoſted a trauers le Murage, et
vend en grosse. Et est aussy cest difference, que tel Toll co-
bent estre pay tous dits per cestuy que Achate le chose, et
custome per Merchant que vend le chose, N.N.Br. 228. e.
Et que Murage nest forsq que Toll appert per le Register,
159. 2. En brief de Essendo quier de Theolonep. Et per l'dis
charter 31.E. 1. p que tous merchants strangers sont ac-
quit d Murage, Damage, & Montage, et vncors ils paie
le grand et petit custome. Vide aussy le bu Webbes' case en le
8, part des Reports de le Seignior Cooke, 47. 2.

*Murage a toll et sur pay
p le buyer &c*

2. Murage ne gist en grant, mes en prescription: car
sicome aucun choses ne gisent en prescription, mes en grant,
come

Le Case de ~~M...~~

come conusans de pleas, Catalla Felon. &c. 1. Henr. 7. 22. b. 9. Henr. 7. 20. 2. Il n'est point d'autres choses que ne gisent en grant, mes en prescription, come d'aueir free Carren en autre terre, ou de prendre Murage, Pontage, ou Picage. 13. Henr. 4. 14. b.

3 Le Reference al bill de Bristoll, est incertain et boid, pur ceo que n'est tiel Ville ou Burgh appell Bristoll, en cest Realme de Ireland, et le Ville de Bristoll entend en le charter, esteant en Engleterre, le auerment que les Burgeses de Bristoll auoient Murage al temps de cest Graunt, ne poet estre try ley. Auy filz doient auer en leur plea que les Burgeses de Bristoll auoient tiel certain Toll ou Customs de chescun chose vende & achat deins le Will, & que ils auoient ceo per graunt del Roy, car donques le Reference fustoit al certenty. Come est tenuz 20. Ed. 3. Fitz. Auowrie 120. En Quo warranto port en Eyre, vers Bailiffs & communalte de Lancaster, ils pledont un charter bl Roy Iohn, que graunt a eux tous franchises que le Burgh de Northampton ad, et pur ceo que nul franchise fust la expresse, ou monstre de Record, seisure fust agard des franchises.

Quant al 2. Charter, p que H. 5. grant al Maior, Bailiues, & Citizens de Waterford, Custumam dictæ ciuitatis vocat. Le Cocquett, capiendam per manus dicti Maioris & Balliuorum in perpetuum : et coment que fust obiect p le Attorney General, que le cocquett n'est forsque acquitance ou Bill testifiant que le custome est pay, que fust al pimes appell Cocquett, pur ceo que per tiel bill, le Merchant est de custuma quierus : Per quel parol le merchant custome, esteant un speciall enheritance de la copone, ne poet passer : et coment que fust auy obiect que custome est payable per chescun seuerall merchant resident & Alien, et pur ceo ne poet estre dit Custuma dictæ ciuitatis : nient obstant que soit limite desire prise per maynes del Maior & Baylives, ou par l'officer del roy, viz. le customer est chargee de ceo, & ils doient auer allowance per petition, come est rule 1. H. 7. 4. 2. ou R. 3. ad graunt Licence al certain merchants a transporter laines, &c. Et de ceo de retenir leur customes, en cest case, nient obstant l'as grant, les

les Customs fueront charge et accomptable par les customs.

Uncoze fuit resoluë, que le ancien Custome de woolls, woollens, et Hydes fuit bien grant al dis coppozation per les parols de Custome vocat. le Cocquett. Car cest ancien custome est communement appell. et conus, per nomme de le Cocquer Custome, en tous Ports de Engleterre, & Irelad. Et custuma dicta ciuitatis terra entend custome payable plus marchandises in dicta ciuitate. Car sauorable interpretation terra fait de tiels graunts selonque le vsage et alloimance. 10.H.7.14.2. Et par ceo que le custome est grant al euy, ils poent ceo collecter per leur proper officer, et le officer del Roy n'est accomptable par ceo, come en le dit case de licence de retainer, 1.H.7.

3 Quant al 3. Charter dat' 12. Maij 3.H.7. p que le dit Roy grant al coppozation de Waterford, quod omnes & singuli ciues & inhabitantes dicta ciuitatis, & omnes & singuli mercatores, rā indigena, quam alienigena de Noua custuma vocat, le Pondage, viz. de prestatione xij. denariorum de libra imperpetuum sint quieti & exonerati, & fuit resoluë, que cest charter ne fuit sufficient Warrant al euy, de receiuer, a leur proper vse, le Pondage de tous marchants, denizens, et aliens, deins le Port de Waterford. Et ceo par 2. principal reasons.

1 Pour ceo que cest grant tend al discharge de chestein particular Marchant, et ne dona le Pondage al coppozation, 4.H.6.b.2. le Roy E.4. grant al Mayor et Burgeses de Wyndesore, que ils ne serrent Jures ou foreiners, ne foreiners ou eux, &c. Per totam curiam les Burgeses que sont impannell quant ils sont demand desre Jures, poent insister le charter, et pleader ceo, mes nemp le Mayor et coppozation: a mesme l'entent est 21.Ed.4.55. & 56. Le case de Wyndesore. Et si ceo fuit dit, que si le roy grant al Abbe que tous les possessions serrent discharge d'Wismes grāt en Parlement (come le Rectour de Edingtons case est 19. Hen.6.63.2.) Le Abbe en cest case, ne poet collecter les Wismes des tenants, et retainer a son prop vse: Illud ou le Roy ad grant al coppozation de London, que les citizens de London serrent discharge de Prisage, le coppozation,

Le Case de Customes.

ration per force de cest graunt, ne püss le Portage de les
citizens. Mes chescun particular home auera le benefit de le
charter, sil voet demander ceo autrement moult.

2 Cest graunt fust fait Anno 3. Henr. 7. a quel temps, le
Bondage que fust graunt p Parliament Anno 14. Edw. 4.
al Fraternity de saint George, come deuât est monstre, fust
en Esse. Mes apres, Anno 10. Henric. 7. cest grant al fra-
ternity de saint George fust repeale per auter act de Par-
liament, & nouel Subsidy de Bondage grant al Roy p 5.
ans. Apres quel temps, viz. 15. H. 7. un auter Subsidy
de Bondage fust graunt al corone en perpetuity, que est le
Bondage oze en question, issint que le nouel Bondage
que fust grant per Parliament, 15. Henr. 7. ne püssoit estre
graunt ou discharge p charter fait, xij. ans deuant, viz.
3. Henric. 7. Car quaut al Graunt en tiel case, est tenus
22. Edw. 4. Fitz. Graunts 29. en le Abbe de Walihams case, 1
que le roy ne poet grant aucun parcel del Distnes del Cler-
gie, deuant que soit graunt per le conuocation. Et quant
al exoneration ou discharge en tiel case, cest point en le
case de Rector de Edington, 19. Henr. 6. 63. a. Aest rule, ne
resolue. Mes admitt que le Rector en cest case la serroit
discharge de Distnes per grant le Roy fait deuant le Par-
liament, yncoze ceo ne serroit rule de cest case, pur ceo que
en le graunt fait al Rector sont poiz de future temps, viz.
que quant aucun taxe, tallage, ou tenth serroit graunt per
Parliament que il, ses terres, & chateux serroit discharge.
Mes cest charter de 3. Henric. 7. parle de Noua Custuma
de Bondage donques en Esse, Car ceo que est nouel, est no-
uement past et nemy future. Et pur ceo cest charter ne ba
en discharge de auter Bondage, que serroit graunt apres
per act de Parliament. A cest entent, vide 34. Henr. 8. Dyer 2
52. a. ou est tenus que le Roy ne poet discharge penalte del
act de Parliament que est desre fait en apres. Come ou
roy grant licence al un de transporter Bell Mettall, nient
obstant aucun Statutes fait, ou desre fait al contrary: apres
act est fait, que prohibe le exportation de Bell mettall sur
certaine paine: Le licence graunt deuant, ne dischargera
cest penalte. Mes la est dit, que le Roy poet dispenser
ou future chose en que il ad enheritance. Mes al temps
de cest charter graunt, viz. 3. Henr. 7. le Roy ne auoit en-
heritance

*future possibility ne poet a grant
est p le roy.*

payable pur Merchandises.

13

Heritage en le Subsidie de Pondage. Car le Pondage don-
ques in Esse fust grant al dit Fraternite de S. George, quel
grant estreant repeal, come est auantdit, nouel Pondage fust
grant al roy pur 5. ans, Anno 10. Henr. 7. Et apres Anno
15. Henr. 7. le Pondage, oze en question, fust grant al roy et
ses heires per Act de Parliament. Mes si le Roy ad euz
enheritance en cest Pondage al temps de cest charter grant
al Waterford, viz. 3. Henr. 7. le discharge, sans question, ad
estre bone. Come le Roy poet grant que l'heir de son tenant
ne sera en Gard, ou que son Tenant ne sera puny en
cessauit. Car coment que ceuz sont future & casual choses,
vncoze le Roy ad enheritance en le Seigniorie al temps
36. Henr. 6. 48.

*possibiliter grant oust son el
ont effonde hors del inheritance
des grantor*

Auzi en plusors cases, coment que graunt del Roy Ex-
tend al future Temps, vncoz sera entend des choses Present
1 en Esse al temps del graunt. Come in 38. Hen. 6. 10. 2.
Si le Roy graunt a moy liberties en tous mes terres,
ieo auera les liberties en les Terres queuz ieo auoy al
temps del grant, et nemy en les terres queuz ieo purchase
2 apres. Ilint si le Roy grant liberties en tous mes De-
meines, 3 apres Tenancy escheat, ieo nauera les liberties
3 en le terre nouelment escheated. Ilint si le Roy graunt
Caralla felonum quorumcunque, 4 apres p Parliament, vn
act est fait Felony que ne fust Felony deuant, le graunter
4 nauera les biens de person attainced de tiel Felony. Ilint
ou l'Euesque de Durham ad iura regalia, 5 escheates de
Treason deins son countie Palatine, il nauera les terres
de Tenant en Taille attainced de Treason, queuz sont for-
fait per le Statute de 26. Henr. 8. come est resolué, 12. El.
Dyer 139.

*grant q extend a future temps for
entend de choses present.*

Et si ceo fust resolué, que cest charter que exonerats les
Merchants de Waterford de Pondage, in Anno 3. Henr. 7.
ne poet estre extend si acquitter euz de nouel Pondage que
fust grant p Parliament An 15. Hen. 7. Mes q tous Mer-
chants Denizens et Aliens payeront Pondage en ce pozt,
forsque ceuz que sont exempt p le prouiso del dit Act de
15. Hen. 7.

Quant al 4. charter, concernant les Officers des Cu-
stomes, fust resolué que ou les customes et Subsidies
remainont

Le Case de Customes

remaiñont en la Corone, & ne sont bien graunt al dit cor-
poracion, le Roy mesme appointera les Officers pur le
collection et due answering de ceuz Duties, nient ob-
stant cest charter, que enable euz de creater tiels Offi-
cers. Mes en case ou custome ou subsidie est bien grant al
corporacion, adonques le constitution de tiels Officers
appertient a euz, a leur officers poent entremedier oue
taunt que est bien graunt a euz, et nient plus, mes ou
leur charter ba en discharge & exoneracion tantum, ils ne
poent appointer tiels officers car ne sont necessarie en tiel
case.

Cest case dependoit plusors Termes en Bank le Roy
icy, ou les points auant dit fueront resoluement ouant
aucun Judgement done en ceo, le dit cite de Wa-
terford, & les autres Maritimes citiez, et Port towne de
cest Realme, per speciall direction del Roy, transmittroient
en Engleterre certain Agents, oue leur seuerall charters, al
eintent que toutes questions queux ont estre moue touchant
les Customes & Subsidies payable al Roy pur Merchandise
en les seuerall Ports de Ireland, sur vieu des ditz
Charters per les Judges en Engleterre, poent estre re-
solut & determiné, sans autre suit perendue le Roy, & les ditz
Corporacions.

Et sur ceo, Termino Michaelis & Jacobi, speciall letters
del Seignior & de parmy Counsell fueront direct al Sir Lau-
rence Tanfeld cheefe Baron, Baron Heron, Sir Io. Doddridge
un des Serjants del Roy, & Sir Henry Hobarte Atturney ge-
nerall del Roy en Engleterre. Et auxi al Sir James Ley don-
ques cheefe Iustice de Ireland, Sir Anthony Seintliger Master
del Rolls, & l'Atturney generall del Roy en cest Realme icy
(queux seruitors de Ireland adonques fueront present en
Engleterre, & attendant al Court, par dispatch des autres
seruitors) per queux letters, le dit Cheefe Baron, & les autres
fueront requise, d'appeller devant euz les ditz Agents, &
sur perusall & consideration en de leur seuerall Charters,
de certifie leur opinions & resolutions, en queux des ditz
Citiez & port Townes, les Customes & Subsidies payable
pur Merchandise doent estre respond & pay al Roy, & en
queux les marchants Denizens, ou Aliens, doent estre dis-
charge

payable pur Merchandises.

16

charge de paiement de ceux duties, & pur quant, &c.

Et accordant a cest direction, les dits Agents fueront appoyntz d'attendre les dits Referres, oue leur charters, et oue leur learned Councell, al Serieants Iurie en Chancerie Lane, al plusors iours en le dit Michaelmas Terme: & la deuant le Seignior chief Baron, et les autres, les questions et pointz auantdit, surdant sur les feuerail charters de Waterford, fueront moue, & Debate, & resoluë, vt supra. Et diuers autres charters fueront produce, mes nul point de difficultie fuit mone sur aucun de eux. Tant seulement, Bolton Recorder de Dublin, insistoit forment, sur un antient charter del Henr. 2. p que le dit Roy ad grant Burgenfibz de Dublin, Quod sint quieti de Theoloneo, Passagio, Pontagio, & omni consuetudine p totam terram nostram Angliæ, Normanniæ, Walliæ, & Hyberniæ vbicunque venerint ipsi & eorum Res, &c. Et il affirmoit, que les parols de Theoloneum, & Consuetudo, fueront apt parols d'acquitter les Citizens de Dublin de le Graund et Antient custome. Et pur le signification de le paroll Theoloneum, il cite le Text en Saint Math. Ghospell, Cum autem prætergrederetur Iesus, vidit quendam sedentem ad Theoloneum, &c. h. est interpret destre al receit del custome. Mes a ceo fuit dit, que pur trouer le signification de Theoloneum en cest case, ne besoigne de resorter al interpreters del Ghospell, mes al interpreters del nostre Ley. Et que en nostre ley, le proper Terme ou Parol de Art que signifie tel Royall dutie que est payable pur Marchandises croissant le Mer. est Custuma, & nemy Theoloneum: quel paroll Theoloneum, en nostre ley, signifie rien forsque un Toll, & Tolk (que est de rime del Theoloneum) nest forsque un petty Duty payable en Markets & faires, per celly que achate le chose, ou Custome est payable p Marchant que est vendoz. N. N. Br. 426. b. & p le Register, 260. a. un difference perenter Toll & Custome payable pur Merchandises appiert. Car en le breefe d'acquitter les biens del Ecclesiasticall person de Theoloneo, Pannagio, Muragio &c. cest clause est mise, Nam ramen merchandisas aliquas non exerceat de eisdem, tant le difference est appariant, & pur ceo il fuit ouer rule pur cest paroll Theoloneum al endroint que, immoquibusq. &c. Quant al autre paroll, Consuetudo, il dit, que ceo fuit Nomen

Argu: q' antient chart p' p'ns Burgen. &c.

Theoloneum q' in nostre Ley.

Consuetudo.

Le Case de Customes.

Nomen æquiuocum et ad 3. significations. 1. Usage à tēps dont memoire ne court, est appel Consuetudo. 2. Antient rentes et seruitues, sont appel consuetudines. 3. Auz les customes payable par marchandises sont appel consuetudines. Et ceo appiert in Magna Charta, ca. 30. Omnes mercatores, nisi publice antea prohibiti fuerint, habeant saluum & securum conductum, exire de Anglia, & venire in Angliam, & morari & ire per Angliam, tam per terram, quam per aquam, ad emendū, & vendendum, sine omnibus malis Tolnetis, per rectas & antiquas consuetudines. Per quel parol consuetudines, il dit que les antient customes payable par exportation de marchandises sont signifie. En mesme le sens (dit il) cest parol est vse en Brañ. lib. 2. ca. 24. Si cui concedatur talis libertas, quod quicquid sit de Theoloneo & consuetudinibus dandis per totū regnum Angliæ in terra & mari, & quod Tolnetum & consuetudines capiat, infra libertatem suam, de vendentibus & ementibus, statim erat quasi in possessione, & possessionē retinebit, cum Tolnetum & consuetudines receperit.

Il monstre auz les copies de certain accompts, conteins en les antient Pipe-Rolls en Engleterre, viz. un de 15. Henr. 2. en ceux parols, Geruafius Draper Vicecomes Northfolk & Suffolk reddit compotum de 45. l. 16. s. 6. d. de consuetudine nauium de Oreford: & in magno Rotulo 5. R. 1. et entree est trouue, Albericus de Billingsgate debet 72. s. 4. d. de consuetudine de Billingsgate & Buttolphesgate, si que il conclude, que en antient temps, quant Henric. 2. felloit cest grant, le parol consuetudo signifioit la dutie del custome payable par marchandises. Uncoze il agree que a cest touc il n'est special duties de prerogative, come customes sont, ne poent passer par tel generall parol de consuetudines. Des antient Grants ont tous soit en fauorable interpretation, selonque le vlage & allowance. Et sur cest ground il mist plusieurs liures, 14. H. 6. 13. 2. Del grant fait p. H. 2. 34. Ass. p. 14. Del grant à Wil le Conqueror, 37. Ass. p. 6. 40. Ass. p. 107. Et 4. 12. 1. 10. H. 7. 13. b.

General grant ne trahe p. r. o.
-gatiu hors del Roy.

Des fois resolu par le Seignior chiefe Baron, et les autres Reserres, que le dit Grant, que ils serrent quieti de omni consuetudine, ne discharge eux de le grant Custome. Et principalement, par mesme le reason, que aduersus de del autre part, viz. par ceo, que consuetudo est nomen æquiuocum.

equiuocum, & signifie plusors kinds de customes. Et issint
estant generall paroll, ne vnques passera cest special roial
duty. Come ou le roy grant omnes piscarias, & piscationes,
roial fishings ne passent: Roy grant tous Mines, roiall
mines de or & argent ne passent: Roy grant tous Amer-
cements, roiall Amercement ne passent, 3. Ed. 3. litz. 445.
presertment fuit fait vers Abbe. que si ad lussier vn point
de schuer que si a les predecessors seigniors del ville, ont vse
de repaier de temps dont memozy ne court, &c. Le Abbe
plead charter del H. 3. desyre quit de reparation de tous
ponts, mulres, & cauleyes, & que cest charter ad estre alloto
en Quo warranto, &c. Uncoze cest plea ne fuit alloto. Car
ceo fuit special charge ou duty p raison de son seignioy,
que n'est discharge p cest general clause. Car ou sont pose
en grant le roy, que desouth vn generall nomme, compre-
hend choses roiall, & choses base, terra prise en fauour del
roy, & les base choses passeront, & les roiall demureront
en le rozone, Plow. Com. 333.

Et le seignior chiefe Baron misoit vn notable case a cest
purpose, adiudge en leschequer de Engleterre, que fuit tuel.
Le roy ad grant al vn Venetian marchand, que si serroit
quit De omnibus Custumis Subsidijs, & impositionib' & om-
nibus alijs denariorum summis debitis & solubilibus pro qui-
buscunque merchandis importandis, &c. & q'il serroit cy free
come les citizens de London. Per colour de cest char-
ter, il clainie desyre free de Pysage, pur ceo que per speciall
charter les citizens de London sont free de Pysage. Un-
coze fuit adiudge que cest Grant del Roy ne discharge luy
de Pysage, pur ceo que Pysage n'est specialite expresse en
mesme le grant. Et sur mesme le reason fuit oze resolu p
le dit chiefe Baron, & les autres Refertes, sur le char-
ter de Drogheda, per que les Burgesles de cest ville sont
discharge de Theoloneo, Passagio, Pannagio, Lastagio, &c.
que per force de cest parol Lastagio, ils ne seront discharge
de Graund Custome de 13. s. 4. d. payable pur chescun
Last de Hydes pur ceo que il y ad vn Last de Herringes, et
Last de Powder, & de plusors autres choses cybien que de
Hydes.

Et adraignint fuit resolu per le dit chiefe Baron &
les autres, que vn subiect ne poet prescriber desyre free &
discharge

Le Case de Customes.

discharge de le auintient custome payable par marchandises, ou de recettuer ces a son ble demesne, par ceo que ceo est un certain reuenue del corone, mes en autres choses que sont casuall, come veuf, Stray, iderck, un subert poer ppestriber.

Et apres ceo, viz. 16. Decembris 6. Jacobi, le dicheste Barons & les autres Referreds retournont al Seigniorz del pntuy counseil en Engleterre un Certificat de lour opinion & resolution, ou, & en quel maner, les dits auintient Customes & le Subsidie de Bondage doent estre pay et respond al Roy, en les seuerall pozt towones del Ireland. A quel Certificate, les Agents par les dits pozt towones submittont eux mesmes, devant les dits seigniorz del counseil, et agreeront, que de hors en avant, les dits Customes et Bondage seront pay accordant. Et sur ceo, cest Certificate fuit transmist en cest Realme, et enroll en le Eschequeriey et accordant a ceo, de puis cest temps, les dits Customes et Bondage ont estre respond, et pay al Roy, en tous les poztz si Ireland.

Trinit



Trin 2. Iacobi.

Le Case de Mixt Moneyes.

LA Roigne Elizabeth, pour payer les gages del Army Royall que fuit maintenant en cest Realme par plusors ans, a suppres-
 ser le rebellion de Tyrone, causast un grand quantite de Mixt moneyes, oue le vsuall stampe del Arms de Cozone, & inscription de sa royal stile, desre come in le Trover de London, & transmittre ceux monies en cest Realme. oue proclamation portant dat 24. Maij, an 43. de sa Reigne: par q la Maiestie declare et establiss ceux Mixt moneyes, immediatement apres le dit proclamation fuyt, desre le Loyall & currant money de cest realme de Ireland, & expresseint command, que ceux monies sront issint vls, accept & repare, per tous les Subjects, et auts, blant aucun traffique ou commerce deins cest realme: & que si aucun pson ou pson refuseont de receiuer ceux Mixt monies, selonque le Denomination ou valuation s ceux, viz. shillings s shillings, & les pieces de vs. s. s vs. s. & sic de ceteris, estant tenz s paist des aucuns usages, fees, stipends, ou debts, ac. Ils sront puniss come contemners de sa royall prerogative & commandement. Et al entent q ceux Mixt monies auient le meillieur course et passage, fuit ouster declare p meisme le proclamation, que apres l 10. iour de lune prochain ensui-
 uant tous auts monies qur ont est currat deins ce realme, deuant le dit proclamation, sront decry & aduall, & esteins
 come

Le Case de Mixt moneyes.

come Bullion, et nemy come loyall & currant Money deins cest Realme.

En Apzill, deuant que cest proclamation fuyt publiſh, quant le pure coine D'engleterre fuyt currant deins cest Realme, vn Brett de Drogheda marchant, atant achate certaine wares d vn Gilbert en London deuiert obligé al dit Gilbert en obligation de 200. l. sur condition que il papera al dit Gilbert ses exrecutozs, ou assignes, 100. l. sterling, currant & Loyall money D'engleterre, a le Tombe del Carle Strongbow in Christ church, Dublin, al certaine iour auener: quel iour happeit deſtre apzès le dit proclamation, et establiſhnt del Standard de Mixt monies deins cest realm: p que, al dit iour et lieu, Brett fist Tender del 100. l. en les Mixt monies del nouel Standard, en pformance del condition del obligation auantdit. Et si cest Tender fust ſufficient d ſauer le ſoyſeiture del dit Obligation, & si le dit Brett oze sur le change ou alteration des Monies deins cest Realme, ſerra compell payer le dit 100. l. en auter ou melleur coine, que en les Mixt monies, ſolouque le rate & valuation d euy al temps del Tender, fuit le queſſion al Councell table, ou le dit Gilbert eſteant Merchand de London ad exhibit petition vers le dit Brett pur le ſpeedie recouerie de ſon debt auantdit.

Et pur ceo que cest fuit le generall Case del Realme, et fait auy de grand impoſtance en conſideration et reaſon d State, Sir George Cary eſteant donqs Deputie et auy Treasourer del Roy, requiroit les chiefe Judges eſteant del pmiue Councell de conferer & conſiderer de cest case, & de retourner a luy leur reſolution touchant ceo. Queux sur conference et conſideration en ſur tous points del dit proclamation, fueront reſolue, que le Tender del dit 100. l. en les Mixt monies, al iour, et lieu auantdit, fuyt bon et ſufficient en la Ley de ſauer le ſoyſeiture del dit obligation. Et que Brett ne ſerra enſoyce al aucun temps apzès, d payer auter Money en diſcharge de cest debt, ſoyſque cest Mixt monie ſolouque le rate & valuation que ceo auoit al temps de Tender. Et cest reſolution fuit certiſie p euy a le Henning Deputie, et le rectificate enter en le councell Boode. Et en cest caſe diuers points fueront conſider, et reſolue.

Le Case de Mixt monies.

12

Primement fuit considerer, si on chescun commonwealth
il besoigne d'aver un certain Standard de money.

*Money shuld avow
1 of money est necessary.*

Car nul commonwealth poet estre sans contract, et
nul contract sans equalité, et nul equalité en contract
sans money. Car c'est q' en les p'mier societiez del monde,
Permutation del un chose p' autre fuit h'e, bncop b'e c'est ceo
fuit troué cumbersome, & le transportation et d'istion des
chose fuit troué difficult & impossible : & p' ceo money fuit
inventé, c'est p' facilité de commerce, q' p' reduire contract
a equalité. Cum non facile concurrebat, vt cum tu haberes
quod ego desiderarem, ego inuicem haberem, quod tu accipere
velles: electa materia est, cuius publica & perpetua estimatio
difficultatibus permutationis subueniret. Paulus libr. 1. ff. de
Contrahendis Empt. Et p' ceo money est dit Per Bodin, men-
tura publica, & Budelius li. 1. de re Numaria ca. 3. dit, Moneta
est iustum medium & mensura rerum commutabilium : nam p'
medium monete fit omnium rerum, que in mundo sunt, con-
ueniens & iusta estimatio. Et a cest entent Keble dit, 12. H. 7.
fol. 23. b. q' chescun chose poet estre baue p' Argent, p' q' pa-
rol Argent il entend money coined. Et le grand benefit del
un etain Standard des monies et des mesures, est bien mon-
stre p' Budelius en cest vers.

Vna Fides, Pondus, Mensura, Moneta sit vna,

Et status illæsus torius Orbis erit.

Secundment fuit resolué, que appartient solement al
Roy d'engleterre, de faire ou copier money deins ses
dominions, issint que nul autre person poet ceo faire,
sans speciall Licence ou commandement del Roy. Et si l'on
presume de faire ceo de son Telle deuote, ceo est
Treason enuers le person del Roy & le commun Ley. Et
ceo appert par le statute de 15. Edw. 3. cap. 1. que est d'apert
decleration del commun Ley, p' Glanvil, Britton, & Beke
deuant cest Statute, Seamford. fol. 2. & 3. & en le cas de
Wines, Plow. Commens. fol. 316. a. cest point est appert
plus clerement; on est dit, que le Roy aura les mines
d'Or & Argent : car il le subiect auoit, si par la Roy ne
poet coigner tieux Mettalles, ne mettre p'ne, ne baue les

*2. & 3. parson de faire money
al common by force p' authority
del Roy.*

Le Case de Mixt moneyes.

eux; car appartient al Roy solement de mettre value al
coine, & faire le p^{re}mier del quantite, & de mettre p^{re}mier a ceo:
le quelesteant fait, le coine est curreant, & si subiect ceo fait,

ceo est grand Treason al commun ley, come appiert, 23.
Al p^{re}mier. Et est grand Treason al Roy, si ceo que il ad sole

ment de faire moneye.

En cest liure 3. choses sont expresse, queux sont requise
al coine de loiall money, viz. Authority del prince, & p^{re}mier
de la value.

Des sur la consideration del case en question,
sunt notez & observez, que 6. choses ou circonstances doent
concurre, si faire Loyall & curreant money, 1. weight, 2. fine-

ness, 3. Impression, 4. Denomination, 5. Authority del
Prince, 6. Proclamation. Car chescun piece de moneye doet
aueir un certaine proportion de weight ou poize, et un cer-

tain proportion de purite ou fineness, que est appel Alloy.
Auz chescun piece doet aueir un certaine forme del Im-

pression, que sera cognoscibilis & discernibilis car sicome
ceci n'est deale sans p^{re}mier, issint metall n'est moneye sans
impression. Et Moneta dicitur a monendo, quia impressione

monet cuius sit moneta. Cuius imago & superscriptio est
hanc. Et l'anis date Cesaris que sunt Cesaris. Auz chescun
piece de moneye couient aueir denomination ou valuation si

quant ceo sera accept ou pay, come per un penny, un groat,
ou un shilling. Et tout ceo couient estre fait per authority
& commandement del prince, car autrement le moneye n'est
Loiall, & doet estre public par proclamation del prince, car

deuant ceo, le moneye n'est curreant.

Les Caus circonstances apearonent en les annient Odi-
gences fait per le Roy, pur le Coinage de moneyes, c'est en
ceci Bealme, que en Engleterre, queux sont destre troue

en le Tower de London, & en le castle de Dublin scy. Auz
les Indentures entre le Roy & les Maistres del Mint, si

contient la proportion de poize, fineness, & alloy, & impression
et inscription, le noime & le value, vid. Stat. 1. H. 6. ca. 12. ou
mention est fait de ceux Indentures, vid. auz Wades case

en la port des Reports de le Seignior Coke, 114. b. si le roy
par proclamation poet faire aucun Coigne Loiall moneye
en Engleterre: & fortiori, il poet, per son proclamation tantum
obediens le Standard des moneyes donnee per son authority
dans ses propres dominions.

*General choses necessary al coinage
de moneye loiall.*

Le Case de Mixt monies.

20

10 Et que le roy p son prerogative port auxy mettre poire
 ou fabrication sur tous coins, appiet per un notable case,
 20 Edw. 3. fol. 60. b. En temps del William le Conquerer,
 le Abbe de Saint Edmunds Bury complainoit al roy en pla-
 ment, que ou il fuit exempt del jurisdiction del Ordinaire
 per divers aultient charters, que le evesque de Norwich
 ad vint son meison encounter ceuz charters b exemption.
 Per que fuit grant et ordaine in Parliament, que si de cel
 temps en avant, le evesque de Norwich ou aucun de ses suc-
 cessors alassent encounter le exemption auantdit, que ilz
 payeront al roy, ou a ses heirs, 30. Talentes ou Besaumes.
 Apres ceo, viz. en temps Ed. 3. Le evesque de Norwich be-
 fola meison arreuer, encounter le ordonnance auantdit, & cest
 contempt estant troue en Banke le roy, Scire facias issit
 vers L'evesque a monsterrer q que il ne payeroit al roy les
 30. Talentes ou Besaumes. Et sur insuffisant plea plead per
 L'evesque, le court agard que le roy recouera les Talentes
 ou Besaumes, et que la poise soit interpret p le roy medme de
 quel poise ilz seront plus ou meins. Per que est manifest
 que ou Talentes ou Besaumes ou autres tiels pieces ou qua-
 tities b Or ou Argent, sont de incertaine value (car Bu-
 dens dit, quod Talenta sunt varia, & pondera sunt, potius quā
 munifera) le roy medme ad poiver de mettre certaine value
 sur eux: selonque le rule bien comus al civils Moneta
 estimationem dat, qui cudendi potestatem habet. Et en cest
 point la common ley D'engleterre agre bien que le s rule
 del civil ley, ius cudendæ Monetæ ad solū Principem, hoc est,
 Imperatorem de iure pertinet. Monetandi ius Principum oī-
 sibus inheret. Ius monetæ comprehenditur in Regalibus, quæ
 nunquam à Regio sceptro abdicantur.

*1 february ad roy de mitt
 value.*

11 L'evesque par aultient charters, cest privilege ou preroga-
 tive ad estre communicate al aucuns subiects en Engleterre:
 come al Archevesque de Cantuarrey per charter del
 roy Arhelstan. Lambert per amb. Ranc. fol. 291. Et L'at-
 chevies de Poppe, & evesque de Durham avoient mintes,
 & poiver de coigner monies, come appiet p le Statute de
 14 Ed. 2. cap. 12. Et le Abbe de Saint Martins le Grand ad
 medme le privilege, come est manifest per le Statute de
 17 Edw. 4. cap. 1. Et cest ius cudendæ monetæ ad estre grant
 al plusors & grands personages en France, entemps pa-

Subpoit ont coign p chart

Le Case de Mixt moneyes.

venant, come Choppinus recite lib. de Domino Franc. fol. 217.2. Et c'est prerogative & cest loir, est ainsi troppe generalment al tunc inferior princeps et States de Germany, per gentes ou permission del Emperoy. Car cest un ley del Emperoy, los cudenda moneyes, nisi cum ab Imperatore concessum fuerit, nemo v. suparo.

Tercement fuit resolu, que sicome le roy p son prerogative poert faire monies de si matter & forme luy plera, il n'a de establir le standard de ces. Il n'a poert si changer son money en substance, & impression, & enhaucier, ou abaisser de value de ces, ou tout duffers de ces, & admettre ces, il n'a que soit foy que Bullion, a son plaisir. Et nota que Bullion, que dicitur latine, Billio, est moneta defensa & prohibita, que videlicet, vsu carer.

chaungz fait de money

Et que le Roy ad vls cest prerogative en Engleterre, appert per plusieurs notozious chaunges del Money, fait en temps del souverain Royes depuis le Roymen conquest An. 56. Hen. 2. Moneta veteri reprobata, nova successit. Matth. 1 Paris. hist. mag. fol. 35.2. Anno 7. Iohannis nouvel money fait coigne, a quel temps le paimier sterling money fuit fait selonque le opinion de Camden, ou si parle de sterling castle en Scotland fol. 706.b. An. 31. Hen. 3. le roy fuit enfoice de faire nouvel Money, cum moneta Anglia circumcidebatur a circumcisis Iudeis, come Matth. Paris dit, fol. 703.2. An. 7. 4 Ed. 1. le standard del Monies fuit revetu, quant le sterling penny fuit establiss de conteneir vicesimam partem vncie, come appert en veteri magna Charta, en le ordonnance appell Compositio mensurarum, ou est ordeine, quod viginti denarii faciant vnciam Anno. 29. Edw. 1. quant les moneyes appell Pollardes fuerent detrie, nouvel sterling money fuit aussy coine, vide 6. Ed. 6. Dier 82.b. & lib. Rubro Scaccarii Dublin, part 2. fol. 1.b. Apres ces nouvel monies ont estre fait, 9. Ed. 3. & 13. 6. 7. H. 4. & 5. Ed. 4. & 19. H. 7. & 36. Hen. 8. Et derraignement 2. Elizabetha, quant tous mixt et base Monies furent detrie, & le standard de pure silver establiss, que continue a cest iour, de que Bodin fait honorable mention lib. 6. de Republica cap. 3. 11. Et semble, ceuz changer de Monies en Angleterre furent fait per le authorite del roy sans Parliament, comme que

Le Case de Mixt moneyes.

21

que plusieurs acts de Parliament ont estre fait, p^r ordering del eschange, & a p^roibiter le exportation des Monies fa-
ites & ordaines p^r le roy, & le importation & utterance de fo-
reine & faux monies, sur certains paines & penalties. Dont
aucuns fueront capitall, & aucuns pecuniary. Et plusieurs
ordinnances del roy fait sans Parliament, sont appell sta-
tutes, come Statutum de moneta magnum, & statutum de mo-
neta paruum, q^u sont issint nomine statutes, p^r ceo, que le ordi-
nance del roy oue p^roclamation en tiel case, ad le force del
act de Parliament.

Et sicome le Roy ad vse de Changer le standard de ses
monies, c'esta scavoire le forme & le substance, issint ad il vse
per s^{on} prerogative de enchanger ou abaser le valuation de
seo, nient obstant que le forme, & substance continue come
il fuit devant. Et ceo fuit fait, 5. Ed. 4. come appiert p^r le
liuer de 9. Ed. 4. fol. 49. 1. ou Danby dit, que un noble est me-
lior q^{ue} il fuit Anno 20. de cest roy, 20. h. en chescun no-
ble : & le roy H. 8. p^r special commission Dat. 24. Julij, 206. 1. 2.
de son raigne, authoize le Cardinal Wolsey oue le admis
des autres del Counsell del Roy, de modifier valuation sur
touts monies de Engleterre, de temps en temps, solanque
les rates & values del monies de foyneuations, sur fur-
ront adonques trop enhautes, specialist p^r le Emperer, es
le roy de France, c^oe est expresse en le dit commission. Vide
auxy 6. & 7. Ed. 6. Dier 82. & 83. Divers cases sur imbas-
ment des Monies.

*le Roy enhausse le value de
moneye &c*

Et est desire monte que ent le an, 36. H. 8. quant plusieurs
foys de base monies fuerot coigne en Engleterre, 32. Eliz.
quant le pure standard des liuer monies fuit establi. & p^r
ad 3. notozious fautes ou decres de base monies publi^z p^r
p^roclamation : le p^rmier, 9. Julij 5. Ed. 6. le second 17. Au-
gusti eodem anno, come est expresse en Dier 83. a la tierce, 28.
September. 2. Eliz.

Et sicome le Roy ad tous foys vse de faire & changer
les monies de Engleterre, il ad auxy vse meisme le p^rero-
gative en Ireland tous temps depuis le 12. an del Roy
John, que le p^rmier standard des English monies fuit es-
abli en cest Realme : come est record Per Marth. Parli. mag-
na hist. fol. 220. b. ou il dit, que cest Roy essant in Ireland

Le Case de Mixt moneyes.

constituit ibidē leges & cōsuetudines Anglicanas, ponens ibidē Vicecomites, aliosque ministros, qui populū regni illius iuxta leges Anglicanas iudicarent. Præfecit autem ibidem Iohannē de Gray Episcopū Norwicensem Iustitiarium, qui denarium terræ illius ad pondus numismatis Angliæ fecerat publicari, & tam obulū quā quadrantem rotundū fieri præcepit: iussit quoque Rex, ut illius monetæ vsus tā in Anglia quam in Hibernia communis ab omnibus haberetur, & vtriusque regni denarius in thesauris suis indifferenter pōneretur.

Per que appiert, que le Standard de monies en Engleterre en Ireland fuit equall al p̄imes, & que le English money fuit un quart part melior in value que le Irish, come ceo ad estre depuis le temps del Edw. 4. Car devant, sicome fuit un mesme Standard de moneyes en ambideux Reaumes, issint tous foits quant le money fuit change en Engleterre, fuit auz change in Ireland cōe en le an 1279. viz. 7. Edw. 1. quant 1. dw. 1. establiū nouel money en Engleterre, come devant est monstre, fuit auz mutation des moneyes en Ireland, come est noate en les Annals de cest Reaume publiē per Camden en son liuer de Britannia, ou est dit, que Anno 1279. Dominus Robertus de Vford iustitarius Hyberniz intrauit Angliā, & constituit loco fratrem Robert de Feibourne Episcopum Waterford, cuius tempore mutata est moneta. Issint 29. Edw. 1. quant per speciall ordonnance del Roy les Pollards & Crockards fuit decrie & adnull, mesme le ordonnance fuit transmitt en cest Reaume, & enroill en le eschequer ley, come est troue in libro Rubro Scaccarij hic part. 2. fol. 2. b. auz en les Annals abant dit, est note en mesme le an, Numisma Pollardarum prohibetur in Anglia & Hybernia.

Et sicome le Standard des moneyes fuit equall, issint les mint & coinage en cest realme fuit order & gouvernē en mesme le manner come en Engleterre, come appiert p̄ le accompt del Donat. Ro Andrew de Speidsholt maistrers del eschange al Dublin, p̄ 1. Ro. 1. in A. schidis Castri Dublin, & in libro Rubro Scaccarij hic part. 2. fol. 1. & en Ro. Parliament, in Ca. 1. Dublin, 12. Edw. 3. cap. 56. vide auz plusors ordonnances la touchant le mint & moneyes, 7. E. 4. c. 9. 10. Ed. 4. c. 4. 11. Ro. 1. c. 1. 12. E. 4. c. 1. 13. R. 3. c. 7.

Des

Des le premier difference et inequalite enter les Stand-
dardes del englisb Monies, et Irisb Monies, est troue en 5.
Edw. 4. Car donques fuit declare en Parliament icy, que
le Noble fait en temps Edw. 3. R. 2. Hen. 4. Hen. 5. & H. 6.
serroit de cest temps en auant curreant en cest Reialme, pur
r. 5. & issint le demy Noble, & tous auters coines solong
meisme le rate vide Rot. Parliament, 5. Edw. 4. cap. 40. & 11.
Edw. 4. cap. 6. & 15. Edw. 4. cap. 5. in le office del Rolles in
Castro Dublin. Apres quel temps, le Money fait in Ireislb,
ou p. Ireland, fuit tous foies meinder in valuation que le
Money de engleterre, & le vsuall proportion del difference
fuit le quart part tantum, viz. le Irisb shilling fuit forsique
9. d. del engleterre vide le Proclamation auantdit, dat. 24.
Maij. 43. Eliz. entol en le Chauncery icy, ou la Roigne fait
mention de cest difference fait per les progenitors enter le
Standard des moneyes fait pur cest Reialme, & les monies
D'engleterre. Et nota que ceo que est appellé Standard del
money en cest case, est meisme que est appellé le French
Piech de money, p. Bodin, Pés monetarium, quasi Princeps ibi
pedem figat aiant fix & establi le pois & purte del Money
en un certaine proportion, que ne terra transgredir per les
Monies.

*grish money arriue a un pied
de 4 plus bas f. le money
d'Angleterre.*

Standard de money

Et issint est manifest, que les Roies de engleterre ont
touttois eto & exercise cest prerogative d'coiner, & changer
le forme, & quant ils trouant expedient, de enhaier & aba-
iser le value de monies, deins leur dominions. Et cest pre-
rogative est allowe & approue non solement p. le comon ley, mes
aussy p. les rules del Imperiall Ley. Badelius de re num-
aria libr. 1. cap. 5. Princeps ad arbitrium suu, irrequisito assen-
su subditorum, valorem monetæ constituere potest, quia popu-
lus, quantum ad hoc, omnem potestatem & iurisdictionem in Prin-
cipem seu Imperatorem transulisse dicitur. Et pauls post en
meisme la charter, coment que asuns, DD. sont de opinion,
Principem sine assensu populi monetam mutare non posse. Un-
cours il conclude, Si Princeps consuetudinem mutare monetæ au-
toritate propria sine consensu populi, a reposit, cuius tunc me-
moriam non existit, tunc libere impoiterit in hoc facere potest.
L. hoc iure paragr. ductus aquæ. ff. de aqua quotidian. &c. Et
Coutumes lib. de collatione veteris numismatis, cap. de mu-
tatione